

Arbitrator Kenneth Kramer

October 27, 2022

JAMS ARBITRATION

- - - - - X  
GARY GREENBERG, et :  
al, :  
Claimants, : JAMS Reference No.  
v. : 1425034873  
IAN S. PECK, et al., :  
Respondents. :  
- - - - - X

Taken Before:

Arbitrator Kenneth Kramer

New York, New York

Thursday, October 27, 2022

9:44 a.m.

Job No.: 6251237-001

Pages: 1 - 114

Reported By: Leonora L. Walker, Court Reporter

Arbitrator Kenneth Kramer

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<p>Page 2</p> <p>1 Proceeding held at the offices of:</p> <p>2</p> <p>3</p> <p>4 JAMS</p> <p>5 620 8th Avenue</p> <p>6 New York, New York 10018</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 Pursuant to notice, before Leonora L. Walker,</p> <p>12 Court Reporter, Notary Public in and for the State</p> <p>13 of New York.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 4</p> <p>1 C O N T E N T S</p> <p>2 EXAMINATION WITNESS PAGE</p> <p>3 DIRECT:</p> <p>4 By Mr. Press Dr. Robert Simon 5</p> <p>5 Ian Peck 83</p> <p>6</p> <p>7 CROSS:</p> <p>8 By Mr. Nikas Dr. Robert Simon 54</p> <p>9 Ian Peck 91</p> <p>10</p> <p>11 RE-DIRECT:</p> <p>12 By Mr. Press Dr. Robert Simon 80</p> <p>13</p> <p>14</p> <p>15 E X H I B I T S</p> <p>16 EXHIBIT ADMITTED PAGE</p> <p>17 Respondent's Report 6</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 3</p> <p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF CLAIMANTS:</p> <p>3 LUKE NIKAS, ESQUIRE</p> <p>4 PAUL MASLO, ESQUIRE</p> <p>5 QUINN EMANUEL</p> <p>6 51 Madison Avenue, 22nd Floor</p> <p>7 New York, New York 10010</p> <p>8 212.849.7000</p> <p>9</p> <p>10 ON BEHALF OF RESPONDENTS:</p> <p>11 MATTHEW PRESS, ESQUIRE</p> <p>12 PRESS KORAL LLP</p> <p>13 641 Lexington Avenue, 13th Floor</p> <p>14 New York, New York 10022</p> <p>15 212.922.1111</p> <p>16</p> <p>17</p> <p>18 ALSO PRESENT:</p> <p>19 Dr. Timothy Hunter</p> <p>20 Dr. Robert Simon</p> <p>21 Ian Peck</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 5</p> <p>1 P R O C E E D I N G S</p> <p>2 ROBERT B. SIMON, PhD, called as the</p> <p>3 witness, having been duly sworn by a Notary</p> <p>4 Public, was questioned and testified as</p> <p>5 follows:</p> <p>6 ARBITRATOR KRAMER: State your full name</p> <p>7 for the record, please.</p> <p>8 THE WITNESS: Robert Barry Simon.</p> <p>9 ARBITRATOR KRAMER: Good morning,</p> <p>10 Mr. Simon.</p> <p>11 THE WITNESS: Good morning, sir.</p> <p>12 DIRECT EXAMINATION</p> <p>13 BY MR. PRESS:</p> <p>14 Q Dr. Simon, could you turn to -- I believe</p> <p>15 it's Exhibit -- Tab 18 in the claimant's exhibit</p> <p>16 binder?</p> <p>17 A Okay.</p> <p>18 Q Do you have that in front of you?</p> <p>19 A I do.</p> <p>20 Q And I believe that this document -- well,</p> <p>21 what is this document?</p> <p>22 A This is the report that I prepared</p> <p>23 regarding the issues in this case.</p> <p>24 Q Okay.</p> <p>25 A Attached I think is my CV, yes.</p>



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<p style="text-align: right;">Page 6</p> <p>1 MR. PRESS: And I know that we looked at</p> <p>2 this before yesterday. Was this admitted -- did</p> <p>3 you submit this as an exhibit?</p> <p>4 MR. NIKAS: No. Our view, just to put it</p> <p>5 simply, of course we don't -- we're going to have</p> <p>6 his testimony, but our position is that this is</p> <p>7 inadmissible because it only does one thing, that</p> <p>8 is challenge assumptions that Mr. Hunter makes,</p> <p>9 and those assumptions in our view are required by</p> <p>10 the governing law in a contract case involving</p> <p>11 damages. He provides no valuation, no opinions</p> <p>12 about anything that are actually at issue in this</p> <p>13 case, and so we'd object to it as irrelevant. And</p> <p>14 of course we'll hear the testimony and do the</p> <p>15 cross and we'll brief those issues, but we would</p> <p>16 object to the admissibility of those documents.</p> <p>17 ARBITRATOR KRAMER: You're objecting now?</p> <p>18 MR. NIKAS: Yes.</p> <p>19 ARBITRATOR KRAMER: That's overruled then.</p> <p>20 MR. PRESS: Okay. I'd like just right now</p> <p>21 to have -- I'd move that the report be admitted in</p> <p>22 this proceeding.</p> <p>23 ARBITRATOR KRAMER: Yes, it's received.</p> <p>24 (Whereupon, the report was admitted and</p> <p>25 received.)</p>	<p style="text-align: right;">Page 8</p> <p>1 completing the doctoral work without completing --</p> <p>2 not having completed the thesis.</p> <p>3 Q Okay. And what area was that in?</p> <p>4 A In the same area, same.</p> <p>5 Q And that was art history and archeology?</p> <p>6 A Art history.</p> <p>7 Q And was that also involving medieval and</p> <p>8 Renaissance paintings?</p> <p>9 A Yes, primarily.</p> <p>10 Q And did you get -- did there come a time</p> <p>11 when you got a PhD from Columbia?</p> <p>12 A Yes, that was in '82, 1982.</p> <p>13 Q And what was subject matter of the PhD?</p> <p>14 A The thesis was on the portraits of</p> <p>15 Cosimo I de' Medici, the Duke of Florence by</p> <p>16 Bronzino.</p> <p>17 Q Okay. And did you -- following -- or</p> <p>18 during the time of your education, did you perform</p> <p>19 any consulting or other services in the art</p> <p>20 business?</p> <p>21 A Yes. Actually, I think I wrote my first</p> <p>22 appraisal when I was an undergraduate but did</p> <p>23 start to do some very casual consulting work when</p> <p>24 I was in graduate school and then more seriously</p> <p>25 afterward.</p>
<p style="text-align: right;">Page 7</p> <p>1 BY MR. PRESS:</p> <p>2 Q So, Mr. Simon, could you turn to your CV,</p> <p>3 which is at the back of the Exhibit 18.</p> <p>4 And is this CV a fair and accurate</p> <p>5 representation of your education and career?</p> <p>6 A Yes. I prepared it.</p> <p>7 Q And where did you receive your education?</p> <p>8 A My education was primarily Columbia</p> <p>9 College and Columbia University where I have</p> <p>10 received master's -- bachelor's, master's, MPhil,</p> <p>11 and doctorate degrees, PhD.</p> <p>12 Q And what were the areas of specialization</p> <p>13 in those degrees?</p> <p>14 A In the graduate degree, it's in</p> <p>15 Renaissance painting. And my doctoral thesis was</p> <p>16 on the Florentine artist Bronzino.</p> <p>17 Q And when did you graduate undergrad from</p> <p>18 Columbia?</p> <p>19 A 1973.</p> <p>20 Q And in what year did you get a master's</p> <p>21 degree in art history in --</p> <p>22 A That was 1975.</p> <p>23 Q And then you got an MPhil.</p> <p>24 What is that?</p> <p>25 A That's the next stage; that's sort of</p>	<p style="text-align: right;">Page 9</p> <p>1 Q Directing your attention to the</p> <p>2 professional experience portion of your CV, and I</p> <p>3 guess going in reverse order -- chronological</p> <p>4 order from the bottom, can you describe the kind</p> <p>5 of work you were doing between, I guess, 1974 and</p> <p>6 1982 when you got your PhD?</p> <p>7 A Yes. I had been engaged by a private</p> <p>8 Irish collector to advise on the creation of the</p> <p>9 collection of Old Master paintings. I had worked</p> <p>10 as a consultant to the Uffizi Gallery, in Florence</p> <p>11 on their cataloging. And I'm trying to remember</p> <p>12 even the other private collector that would</p> <p>13 occasionally -- you know, I would work with. The</p> <p>14 Irish collector was one for a number of years on a</p> <p>15 regular basis.</p> <p>16 Q And the work you did for the Irish</p> <p>17 collector was in connection with Old Master</p> <p>18 paintings?</p> <p>19 A Old Master paintings, yes.</p> <p>20 Q Okay. And in your professional experience</p> <p>21 description in your CV, it notes -- it appears to</p> <p>22 note some kind of relationship with the</p> <p>23 Metropolitan Museum of Art in New York?</p> <p>24 A I was a research fellow in the European</p> <p>25 Paintings department for two years. And before</p>



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<p style="text-align: right;">Page 10</p> <p>1 that, a summer assistant in the department.</p> <p>2 Q Okay. And was that in connection with Old</p> <p>3 Masters paintings?</p> <p>4 A Yes, that's the department that includes</p> <p>5 Old Master paintings.</p> <p>6 Q Okay. And you mentioned you were an</p> <p>7 author and researcher for the Uffizi Gallery, in</p> <p>8 Florence?</p> <p>9 A Yes.</p> <p>10 Q And was that work in connection with Old</p> <p>11 Master paintings?</p> <p>12 A Yes.</p> <p>13 Q And did that involve some of the same</p> <p>14 kinds of artists that have been discussed in the</p> <p>15 comparables in this proceeding?</p> <p>16 A My work there was mostly on the minor --</p> <p>17 more minor artists. The major ones they kept for</p> <p>18 themselves, yes.</p> <p>19 Q And in -- since your PhD, what have your</p> <p>20 professional activities been?</p> <p>21 A Well, I've been an appraiser and a</p> <p>22 consultant both for myself for an appraisal</p> <p>23 company that's called Crosson Dannis. I don't</p> <p>24 think they exist anymore as a real estate company,</p> <p>25 that had a fine art division that I directed. And</p>	<p style="text-align: right;">Page 12</p> <p>1 reflected on your CV?</p> <p>2 A Yes, they are.</p> <p>3 Q Okay. And are these all your publications</p> <p>4 or are these just some of the many publications --</p> <p>5 A I think they all except for really, you</p> <p>6 know, self-published kind of catalog entries and</p> <p>7 the like. These are those that you could go out</p> <p>8 and buy basically.</p> <p>9 Q Okay. And have your publications</p> <p>10 generally been on the topic of Old Masters works?</p> <p>11 A Generally speaking.</p> <p>12 Q And then have you also provided lectures</p> <p>13 and taught courses?</p> <p>14 A Yes.</p> <p>15 Q And are those reflected in your CV as</p> <p>16 well?</p> <p>17 A Yes.</p> <p>18 Q And let's see, looking at them, it looks</p> <p>19 as though they go back to 1973?</p> <p>20 A Yes. I talked a lot.</p> <p>21 Q And what kind of institutions have you</p> <p>22 lectured on concerning Old Master paintings?</p> <p>23 A You mean where?</p> <p>24 Q Yes.</p> <p>25 A At appraisal organizations, museums,</p>
<p style="text-align: right;">Page 11</p> <p>1 then for an art fund, which is listed on the CV,</p> <p>2 and then for two dealers in Old Master paintings,</p> <p>3 eventually going out on my own as a dealer, as</p> <p>4 well as a consultant appraiser.</p> <p>5 Q Okay. And what sort of percentage of the</p> <p>6 work you did during that period since 1982 has</p> <p>7 involved Old Masters paintings?</p> <p>8 A Ninety percent.</p> <p>9 Q And in your -- according to your CV, since</p> <p>10 1990 you've had -- you've been an art dealer,</p> <p>11 appraiser, and consultant, and president of Robert</p> <p>12 Simon Fine Art?</p> <p>13 A Correct.</p> <p>14 Q Okay. And what kind of work do you do at</p> <p>15 Robert Simon Fine Art?</p> <p>16 A I have a gallery here in Manhattan</p> <p>17 focusing on Renaissance and Baroque painting, Old</p> <p>18 Master painting, European painting, occasionally</p> <p>19 some American paintings, but not contemporary</p> <p>20 works. Really old historical artists that would</p> <p>21 be categorized today.</p> <p>22 Q Okay. And have you published work or</p> <p>23 writings concerning Old Master paintings?</p> <p>24 A Yes, many.</p> <p>25 Q And are some of those publications</p>	<p style="text-align: right;">Page 13</p> <p>1 conferences, independent scholarly conferences,</p> <p>2 auction houses. Just looking down here, the</p> <p>3 Center For Art Law is a recent one. Two weeks</p> <p>4 ago, I spoke at the Reading Public Museum, in</p> <p>5 Pennsylvania. So it's a variety of places. A</p> <p>6 couple of legal ones I see looking back now as</p> <p>7 well.</p> <p>8 Q Now, in connection with your work at</p> <p>9 Robert Simon Fine Art, you conduct art appraisals</p> <p>10 from time to time?</p> <p>11 A I do.</p> <p>12 Q And, in fact, have you had a role at the</p> <p>13 Appraisers Association of America, in New York</p> <p>14 City?</p> <p>15 A Yes, I've been a member for many years and</p> <p>16 served on their board in various titled roles,</p> <p>17 secretary/treasurer, that kind of thing, and then</p> <p>18 eventually as the president.</p> <p>19 Q So you were the president of the</p> <p>20 Appraisers Association of America, in New York?</p> <p>21 A Yes, I was.</p> <p>22 Q And during what years were those?</p> <p>23 A Let's take a look. I was president in</p> <p>24 1998 to 2000.</p> <p>25 Q Okay. And --</p>



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<p style="text-align: right;">Page 14</p> <p>1 A It's a two-year revolving. It's not that</p> <p>2 I got thrown out.</p> <p>3 Q Did you -- now, have you provided</p> <p>4 appraisals of art in connection with legal</p> <p>5 proceedings before?</p> <p>6 A Yes.</p> <p>7 Q Okay. And have you provided testimony as</p> <p>8 an expert witness in legal proceedings before?</p> <p>9 A Yes, I have.</p> <p>10 Q And have you been accredited by a court as</p> <p>11 an expert witness before?</p> <p>12 A Yes.</p> <p>13 Q And were you accredited as an expert</p> <p>14 witness in connection with valuation of Old</p> <p>15 Masters paintings?</p> <p>16 A Yes.</p> <p>17 MR. PRESS: Okay. At this time I'd move</p> <p>18 that Mr. Simon be accepted as an expert in Old</p> <p>19 Master paintings.</p> <p>20 MR. NIKAS: I have no objection to his</p> <p>21 qualifications; only the scope of the report,</p> <p>22 which I'll raise at the appropriate time.</p> <p>23 ARBITRATOR KRAMER: Okay. Dr. Simon is</p> <p>24 accepted as an expert.</p> <p>25 BY MR. PRESS:</p>	<p style="text-align: right;">Page 16</p> <p>1 Q And in connection with the engagement, did</p> <p>2 you personally inspect the painting?</p> <p>3 A Yes.</p> <p>4 Q Okay. And how about how many times?</p> <p>5 A Twice.</p> <p>6 Q Okay.</p> <p>7 A Once in October of 2019 and once in the</p> <p>8 November of 2019.</p> <p>9 Q Okay. And where was the painting located?</p> <p>10 A It was house of Virginia Bonito in the</p> <p>11 Bronx.</p> <p>12 Q And who is Virginia Bonito?</p> <p>13 A She is an art historian, someone I first</p> <p>14 met when I was in graduate school at Columbia, and</p> <p>15 although I hadn't really kept up with her and so I</p> <p>16 don't -- I mean, I knew of her activities back at</p> <p>17 the time when I was in graduate school, but she is</p> <p>18 purportedly or evidently the owner of the Andrea</p> <p>19 del Sarto painting we are talking about.</p> <p>20 ARBITRATOR KRAMER: Where does Dr. Bonito</p> <p>21 teach?</p> <p>22 THE WITNESS: I don't think she teaches.</p> <p>23 BY MR. PRESS:</p> <p>24 Q Okay. And so your understanding is that</p> <p>25 she was an owner of the painting?</p>
<p style="text-align: right;">Page 15</p> <p>1 Q So, Dr. Simon, what are some factors that</p> <p>2 go into the valuation of an Old Masters painting?</p> <p>3 A Well, primarily the two major ones are</p> <p>4 attribution and the degree of acceptance of the</p> <p>5 attribution and the condition of the painting.</p> <p>6 Q Okay. And --</p> <p>7 A Other ones, I should say, have to do with</p> <p>8 provenance, the dating of the picture, the size of</p> <p>9 the painting of course is critical as well, and</p> <p>10 where it is in the artists's career. There a lot</p> <p>11 of other secondary value considerations.</p> <p>12 Q Is the condition of the painting among the</p> <p>13 more important factors that go into the valuation?</p> <p>14 A Yes.</p> <p>15 Q Now, were you consulted by Ian Peck and</p> <p>16 Gary Greenberg concerning the painting that's the</p> <p>17 subject matter of this dispute?</p> <p>18 A Yes.</p> <p>19 Q Okay. And around what year was that, to</p> <p>20 your recollection?</p> <p>21 A It was in the summer of 2019.</p> <p>22 Q And do you recall in connection with that,</p> <p>23 did you communicate with both Mr. Peck and from</p> <p>24 Greenberg from time to time?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 17</p> <p>1 A Yes.</p> <p>2 Q And did she prepare her own description of</p> <p>3 the painting, the condition report?</p> <p>4 A Yes. After I had been engaged by Gary and</p> <p>5 Ian, I was put in contact with her and she sent me</p> <p>6 a dossier of material with a confidentiality</p> <p>7 agreement, non disclosure agreement about all the</p> <p>8 material included.</p> <p>9 Q Okay. And was she the author of the</p> <p>10 materials herself, to your knowledge?</p> <p>11 A A good part of them. There were also some</p> <p>12 external documents in there, but -- the --</p> <p>13 something that was called an executive description</p> <p>14 and the conservation agreement and history of the</p> <p>15 provenance, the sort of -- and an essay about the</p> <p>16 identity of the sitter, these were all authored by</p> <p>17 her.</p> <p>18 Q And these are among -- strike that.</p> <p>19 Did you provide these materials to</p> <p>20 Mr. Peck and Mr. Greenberg?</p> <p>21 A I did.</p> <p>22 Q Okay. And did you find Ms. Bonito to be a</p> <p>23 reliable source concerning the painting where she</p> <p>24 was an owner?</p> <p>25 MR. NIKAS: Objection.</p>



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<p style="text-align: right;">Page 18</p> <p>1 ARBITRATOR KRAMER: Overruled.</p> <p>2 THE WITNESS: When I -- I mean, I took her</p> <p>3 written material as accurate when I received it.</p> <p>4 But then when I saw the painting and when she</p> <p>5 started to speak about it and responded to my</p> <p>6 questions, I began to doubt many of the details</p> <p>7 and, I think, salient points that she was</p> <p>8 expressing about her conclusions.</p> <p>9 BY MR. PRESS:</p> <p>10 Q And describe -- so what about was the</p> <p>11 first time that you saw the painting and met with</p> <p>12 Ms. Bonito?</p> <p>13 A I think it was October 15, 2019.</p> <p>14 Q And who was in attendance?</p> <p>15 A Myself and Ian Peck.</p> <p>16 Q And did you observe the condition of the</p> <p>17 painting at that time?</p> <p>18 A Yes.</p> <p>19 Q And what were your observations?</p> <p>20 A Well, first of all, the painting was shown</p> <p>21 in the afternoon, in a not terribly well-lighted</p> <p>22 living room, so it wasn't -- although she did</p> <p>23 bring out a -- you know, a strong light, it still</p> <p>24 was not an ideal place to see them but -- to see</p> <p>25 the picture. But I was confused by what I saw. I</p>	<p style="text-align: right;">Page 20</p> <p>1 thought, my level of expertise. It was certainly</p> <p>2 enough to raise a red flag.</p> <p>3 Q And did you communicate that conclusion to</p> <p>4 Mr. Greenberg?</p> <p>5 A I believe I did, yes.</p> <p>6 Q And did you return to view the painting a</p> <p>7 second time?</p> <p>8 A I did.</p> <p>9 Q And who was in attendance at that time?</p> <p>10 A So at that point I had asked Diane</p> <p>11 Modestini, who is a professor of paintings</p> <p>12 conservation at the Conservation Center of the</p> <p>13 Institute of Fine Arts, and a world-renown</p> <p>14 authority in the field, conservator of the Kress</p> <p>15 Collection across America National Gallery, in</p> <p>16 Washington, and I asked her whether she would come</p> <p>17 with me because I valued her opinion.</p> <p>18 Q Okay. And did Ms. Modestini view the</p> <p>19 painting with you?</p> <p>20 A She did. And Ian was in attendance as</p> <p>21 well.</p> <p>22 Q Okay. And what did -- what else occurred</p> <p>23 at that viewing?</p> <p>24 A Well, again, at that point then and</p> <p>25 possibly the first time, Dr. Bonito presented a</p>
<p style="text-align: right;">Page 19</p> <p>1 have extensive experience not as a conservator but</p> <p>2 in looking at pictures with conservators in a</p> <p>3 museum context in what the critical issues are and</p> <p>4 condition, that's partly what I do in my own</p> <p>5 business and studying paintings for possible</p> <p>6 acquisition and giving advice. And I was -- I</p> <p>7 should say I was at first disappointed with the</p> <p>8 look of the painting. But then as Dr. Bonito</p> <p>9 started to rehash the kind of conservation</p> <p>10 treatment of the picture, there were certain</p> <p>11 details that did not really correspond to what I</p> <p>12 was seeing. It gave me pause that what I was</p> <p>13 witnessing was not -- what I was studying was</p> <p>14 really not as it was purported to be.</p> <p>15 Q Okay. Did you decide to engage a</p> <p>16 conservator to assess the painting?</p> <p>17 A No. Actually, after leaving it and</p> <p>18 speaking with -- and Ian asked me what I thought</p> <p>19 of the condition of the painting, and I thought I</p> <p>20 couldn't really come to a good conclusion. It was</p> <p>21 not -- among other things, there were aspects of</p> <p>22 it that were so problematic that I thought it</p> <p>23 really needed the point of view of an independent</p> <p>24 trained conservator, someone really familiar with</p> <p>25 Renaissance paintings because it was beyond, I</p>	<p style="text-align: right;">Page 21</p> <p>1 color transparency of the painting which she</p> <p>2 suggested was a clean state or stripped state</p> <p>3 photograph of the painting; that is to say, a</p> <p>4 photograph of the painting after the -- after old</p> <p>5 restoration had been removed and witnessing was</p> <p>6 only the original painting before subsequent</p> <p>7 in-painting had been done.</p> <p>8 And I think that was one of the critical</p> <p>9 points where I came to believe that the</p> <p>10 presentation was not accurate. I conferred with</p> <p>11 Diane Modestini afterwards, and we kind of</p> <p>12 compared notes, even just driving back into</p> <p>13 Manhattan from the Bronx. And the very real</p> <p>14 possibility that I felt and that Diane felt as</p> <p>15 well was that the image that we had seen of a</p> <p>16 so-called clean state was actually photographed</p> <p>17 after a considerable amount of restoration had</p> <p>18 already been done. It was kind of selective in</p> <p>19 that regard.</p> <p>20 Q And did you communicate the facts</p> <p>21 concerning that visit to Mr. Greenberg?</p> <p>22 A I did.</p> <p>23 Q Okay.</p> <p>24 ARBITRATOR KRAMER: I didn't hear that.</p> <p>25 MR. PRESS: I asked him if he communicated</p>

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<p style="text-align: right;">Page 22</p> <p>1 the facts concerning that meeting that he just 2 described to Mr. Greenberg.</p> <p>3 THE WITNESS: Yes, I did. I mean, 4 basically the result of that meeting was that I 5 felt it important, and also Diane Modestini did as 6 well, that the painting be examined in a clinical 7 setting in order to evaluate whether my suspicions 8 were correct or whether -- you know, or they 9 weren't and just to be able to see it under proper 10 lighting and with also the diagnostic tools that 11 are available in the painting conservation 12 laboratory.</p> <p>13 ARBITRATOR KRAMER: In October and 14 November 2019, who was your principal? Did you 15 have an engagement agreement?</p> <p>16 THE WITNESS: I did. It was with 17 Mr. Greenberg and Mr. Peck.</p> <p>18 ARBITRATOR KRAMER: Is it a written 19 agreement, condition agreement?</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. PRESS:</p> <p>22 Q Now, did you -- strike that. 23 So following that second viewing that you 24 described, did you seek to have the painting 25 brought to a conservation laboratory for</p>	<p style="text-align: right;">Page 24</p> <p>1 ARBITRATOR KRAMER: Overruled.</p> <p>2 THE WITNESS: I definitely did not reach 3 an -- an appraisal is a specific number. I was 4 not prepared to write an -- I wasn't engaged to 5 write an appraisal specifically but to advise on 6 the value. And I realized that the range of value 7 was so great from -- I think I characterized it as 8 being anywhere in the six figures, that is under a 9 million, to several millions dollar depending on 10 what the condition that the painting might turn 11 out to be.</p> <p>12 ARBITRATOR KRAMER: Who did you tell that 13 to?</p> <p>14 THE WITNESS: I told that to Mr. Peck and 15 Mr. Greenberg.</p> <p>16 BY MR. PRESS:</p> <p>17 Q Okay. So you told Mr. Greenberg that the 18 painting could be worth as little as under a 19 million dollars?</p> <p>20 A Yes.</p> <p>21 ARBITRATOR KRAMER: You misspoke. Under a 22 million dollars.</p> <p>23 THE WITNESS: Under a million, yeah.</p> <p>24 BY MR. PRESS:</p> <p>25 Q As little as under a million dollars, yes.</p>
<p style="text-align: right;">Page 23</p> <p>1 inspection?</p> <p>2 A Yes, it did. Going, in fact, as far as 3 getting proper forms from New York University 4 which requires any outside property to be insured 5 and properly acknowledged. And I believe we had a 6 couple of dates proposed for the delivery of the 7 painting.</p> <p>8 Q And at some point, did you -- nobody 9 called you any more about following through on 10 that work?</p> <p>11 A Yeah. I mean, there were certainly 12 e-mails. I wrote to Ian about when is the 13 painting coming and that sort of thing. And then 14 in December or so, I think it sort of died out, 15 and I never heard more from anybody.</p> <p>16 Q Okay. In your discussions with Mr. Peck 17 and Mr. Greenberg concerning -- you obviously 18 hadn't appraised the painting, but did you give a 19 range of potential values that you thought 20 depending on the condition it could be?</p> <p>21 MR. NIKAS: Objection; there's nothing 22 about this in the report --</p> <p>23 MR. PRESS: Yes, there is.</p> <p>24 MR. NIKAS: -- and this report doesn't 25 reach any conclusion about value.</p>	<p style="text-align: right;">Page 25</p> <p>1 Now, have you reviewed the appraisal 2 report prepared by Dr. Hunter in this matter?</p> <p>3 A I have.</p> <p>4 Q Okay. And do you know whether Dr. Hunter 5 physically examined the condition of the painting?</p> <p>6 A He states that he had not.</p> <p>7 Q Okay. Do you know whether he retained a 8 conservator to examine the painting?</p> <p>9 A Again, in his report, it did not indicate 10 that.</p> <p>11 Q Now, in your professional opinion, is it 12 possible to render an accurate opinion of the fair 13 market value of an Old Masters painting without an 14 evaluation of the condition of the painting?</p> <p>15 A It's possible to render a value. Whether 16 it's accurate or not is the question. I mean, the 17 condition is a -- either directly observing it or 18 ideally having a professional conservator see it 19 and make a report on it, these are preferable 20 conditions.</p> <p>21 Q Okay. And in your opinion, would not 22 having that kind of firsthand information impact 23 the validity of the appraisal?</p> <p>24 A The accuracy of the appraisal, yeah. The 25 appraisal will be valid with whatever caveats are</p>



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<p style="text-align: right;">Page 26</p> <p>1 put into it.</p> <p>2 Q Now, did Dr. Hunter assume that for his</p> <p>3 report that the painting was in good condition?</p> <p>4 A Yes, he did.</p> <p>5 Q Okay. And did you see that that was</p> <p>6 described as an extraordinary assumption?</p> <p>7 A I did.</p> <p>8 Q Now, under USPAP rules, can an appraiser</p> <p>9 make an extraordinary assumption that's contrary</p> <p>10 to known fact?</p> <p>11 A That would usually come under the rubric</p> <p>12 of a hypothetical condition. Often -- for</p> <p>13 example, if you're appraising a painting that had</p> <p>14 been destroyed in a fire and there's really no</p> <p>15 record of what the painting -- what the condition</p> <p>16 of the painting was -- and I think that's here</p> <p>17 without any confirmation of the condition by an</p> <p>18 independent source or firsthand, that I think</p> <p>19 would be more appropriate.</p> <p>20 Q Okay. Now, did Dr. Hunter also assume the</p> <p>21 work was correctly attributed to Andrea del Sarto?</p> <p>22 A He did.</p> <p>23 Q Okay. And did he rely on the letter by</p> <p>24 Sydney Freedberg that was inside his report?</p> <p>25 A He did.</p>	<p style="text-align: right;">Page 28</p> <p>1 Q Okay. Has there been subsequent research</p> <p>2 in scholarships on del Sarto since then?</p> <p>3 A Extensive scholarship, yes.</p> <p>4 Q And to your knowledge, did Dr. Hunter look</p> <p>5 into any of the subsequent scholarship in his</p> <p>6 report?</p> <p>7 A I assume he looked at Andrea del Sarto's</p> <p>8 scholarship, but the painting, to my knowledge,</p> <p>9 has never been published or -- or studied by any</p> <p>10 other scholars so...</p> <p>11 Q Now, let's take a look at Exhibit 17 in</p> <p>12 the binder.</p> <p>13 Okay. Do you recognize -- do you know</p> <p>14 what this document is?</p> <p>15 A Yes. This is Dr. Hunter's appraisal.</p> <p>16 Q Now, directing your attention to page 9 of</p> <p>17 this document...</p> <p>18 A Yes.</p> <p>19 Q Are you there?</p> <p>20 A I am, yes.</p> <p>21 Q In the section entitled "authenticity," do</p> <p>22 you see that?</p> <p>23 A I do.</p> <p>24 Q Is this based on scholarship other than</p> <p>25 the scholarship of Dr. Freedberg?</p>
<p style="text-align: right;">Page 27</p> <p>1 Q Okay. And did -- was there any other</p> <p>2 basis besides the Freedberg letter that he relied</p> <p>3 on in his report to your recollection?</p> <p>4 A I imagine his own judgment as a</p> <p>5 specialist.</p> <p>6 Q Okay. And in your opinion, did Sydney</p> <p>7 Friedberg establish the work was by del Sarto?</p> <p>8 A His is a very important opinion.</p> <p>9 Definitely as a kind of term that really</p> <p>10 especially today requires consensus of scholarly</p> <p>11 opinion, and so even though -- I mean, I certainly</p> <p>12 fully believe it to be Andrea del Sarto. I think</p> <p>13 in the marketplace, more contemporary</p> <p>14 scholarships -- scholar should have been</p> <p>15 consulted.</p> <p>16 Q Was Dr. Friedberg's letter published?</p> <p>17 A No.</p> <p>18 Q And has there been subsequent</p> <p>19 scholarships -- strike that.</p> <p>20 When did Dr. Freedberg write the letter</p> <p>21 that has been used to authenticate the painting?</p> <p>22 A When?</p> <p>23 Q Yeah, what timeframe, if you recall?</p> <p>24 A I'd have to check. I think it was in the</p> <p>25 1990s.</p>	<p style="text-align: right;">Page 29</p> <p>1 A No. I think this is basically a</p> <p>2 repetition of the material that Dr. Bonito</p> <p>3 furnished myself and also Ian Peck and Gary</p> <p>4 Greenberg that was then repeated in the appraisal.</p> <p>5 But it's -- you know, it's set in quotations, and</p> <p>6 I think that's actually the text of Dr. Bonito.</p> <p>7 But there's no further scholarship indicated or</p> <p>8 opinions.</p> <p>9 Q Now, directing you to page 13 of the</p> <p>10 report, it says Appendix A, information provided</p> <p>11 by client; do you see that?</p> <p>12 A I do.</p> <p>13 Q Okay. If you turn to page -- let's turn</p> <p>14 to the summary fact sheet that was included here.</p> <p>15 Is summary fact -- is this something that</p> <p>16 was prepared by Dr. Bonito?</p> <p>17 A Well, I see the redactions, but they --</p> <p>18 yes, this is -- this was -- my copy of it included</p> <p>19 Dr. Bonito's indication of her authorship.</p> <p>20 Q The material in here was the material that</p> <p>21 was prepared by her?</p> <p>22 A Yes.</p> <p>23 Q And then turning to the next page is a</p> <p>24 picture and a quote of de Sarri.</p> <p>25 Is that also material from Ms. Bonito?</p>



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<p style="text-align: right;">Page 30</p> <p>1 A Yes.</p> <p>2 Q And then I'm turning to the next page, is</p> <p>3 the introductory remarks on page 16. That's also</p> <p>4 from Ms. Bonito?</p> <p>5 A Yes.</p> <p>6 Q And next page, page 17?</p> <p>7 A Yes. I think the redacted part at the</p> <p>8 bottom is her -- basically her signature and date</p> <p>9 on it. It types it, indication of authorship.</p> <p>10 Q And page 18, that's the Freedberg letter?</p> <p>11 A Yes.</p> <p>12 Q And that was provided to you by</p> <p>13 Ms. Bonito?</p> <p>14 A Yes.</p> <p>15 Q Okay. And on pages 20 and 21, there's</p> <p>16 some pictures, some images?</p> <p>17 A So these are the images of -- the first</p> <p>18 one on page 20 of the painting as restored. And</p> <p>19 page 21 of the so-called clean state image of the</p> <p>20 painting.</p> <p>21 Q Okay. And so that's the picture that you</p> <p>22 testified about earlier?</p> <p>23 A That is a print of the -- from this color</p> <p>24 transparency that was shown, yes.</p> <p>25 Q And that was the one that you thought</p>	<p style="text-align: right;">Page 32</p> <p>1 report does not give any of those opinions that he</p> <p>2 just started to describe. He gives two opinions.</p> <p>3 He says there are two works that seem to be in</p> <p>4 different condition. This work is not necessarily</p> <p>5 in good condition; it's not clear, and that's it.</p> <p>6 ARBITRATOR KRAMER: That's good</p> <p>7 cross-examination.</p> <p>8 MR. NIKAS: But, sir, he shouldn't be able</p> <p>9 to offer an opinion now that he hasn't offered in</p> <p>10 this report. It's highly prejudicial. If he's</p> <p>11 going to talk one by one about the actual</p> <p>12 comparable --</p> <p>13 MR. PRESS: I believe you should hear it;</p> <p>14 you should let him --</p> <p>15 ARBITRATOR KRAMER: What's the question,</p> <p>16 please.</p> <p>17 MR. PRESS: I'm going to ask him about</p> <p>18 these comparables and whether he thinks they're</p> <p>19 comparable.</p> <p>20 ARBITRATOR KRAMER: And what's your</p> <p>21 objection?</p> <p>22 MR. NIKAS: My objection is he does not</p> <p>23 give that opinion in his report. He says two</p> <p>24 things in his report. There are two works, the</p> <p>25 Botticelli and the Bronzino, that were in good</p>
<p style="text-align: right;">Page 31</p> <p>1 might not have been actually strip state?</p> <p>2 A Correct.</p> <p>3 Q And then turning the page to 23, there's</p> <p>4 a -- is this -- it says condition; do you see</p> <p>5 that?</p> <p>6 A Yes.</p> <p>7 Q Okay. And was this also something</p> <p>8 prepared by Virginia Bonito?</p> <p>9 A I believe it is. When looking through my</p> <p>10 material, I couldn't find this exact image, so --</p> <p>11 but I believe that is -- it was not, as far as I</p> <p>12 know, any kind of independent condition report.</p> <p>13 Q Okay. Now, have you reviewed the</p> <p>14 comparables that Dr. Hunter used in his report?</p> <p>15 A Yes, I have.</p> <p>16 Q And I'm directing you to page 20 of the</p> <p>17 report. Okay. Now, in reviewing the comparables,</p> <p>18 what did you note about them?</p> <p>19 A Well, those that are -- I think some are</p> <p>20 not particularly relevant. I mean, I could one by</p> <p>21 one through them, but they seem more chosen to get</p> <p>22 to the desired goal.</p> <p>23 MR. NIKAS: If I could object here?</p> <p>24 ARBITRATOR KRAMER: Yes.</p> <p>25 MR. NIKAS: The comparable section of his</p>	<p style="text-align: right;">Page 33</p> <p>1 condition. And the condition of this work is not</p> <p>2 clear, period. He doesn't say any of the other</p> <p>3 comparables are good comparables, bad comparables,</p> <p>4 reflect value, don't reflect value. He just</p> <p>5 started to say I think these were used to get to a</p> <p>6 value and they're not necessarily comparable,</p> <p>7 that's not in his report.</p> <p>8 For him to give that kind of opinion, to</p> <p>9 walk through work by work and say why they're</p> <p>10 comparable or not is outside the scope of this</p> <p>11 report, it's highly prejudicial for him --</p> <p>12 ARBITRATOR KRAMER: Why is this</p> <p>13 prejudicial?</p> <p>14 MR. NIKAS: Because he doesn't include it</p> <p>15 in his expert report. And so when you offer an</p> <p>16 expert report that says I have one opinion and you</p> <p>17 show up at trial and you say I have five opinions</p> <p>18 that I didn't disclose to you in the timeline,</p> <p>19 that's highly prejudicial to us.</p> <p>20 He didn't offer the opinion. How can he</p> <p>21 now stand up and offer the opinion? If he had</p> <p>22 offered that opinion, then we would have prepared</p> <p>23 to cross-examine him on an opinion that he</p> <p>24 offered, but he hasn't.</p> <p>25 ARBITRATOR KRAMER: I'll sustain that</p>



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<p style="text-align: right;">Page 34</p> <p>1 objection.</p> <p>2 BY MR. PRESS:</p> <p>3 Q Okay. So, Dr. Simon, the Botticelli at</p> <p>4 the top, what's your observation about the</p> <p>5 Botticelli painting?</p> <p>6 A In terms of its condition?</p> <p>7 Q Yes.</p> <p>8 A It was in almost as perfect as a condition</p> <p>9 of a Renaissance painting that one can find. So</p> <p>10 it's a -- part of its appeal besides its beauty</p> <p>11 and the fact that it's painted by one of the most</p> <p>12 famous artists of the Renaissance is that it was</p> <p>13 in exceptional condition, exceptionally fine</p> <p>14 condition.</p> <p>15 Q And was that in your mind an appropriate</p> <p>16 comparable for this work?</p> <p>17 MR. NIKAS: Objection; he doesn't offer</p> <p>18 that opinion. All he says in the report is it's</p> <p>19 in a potentially different condition.</p> <p>20 ARBITRATOR KRAMER: I'll overrule that</p> <p>21 one.</p> <p>22 THE WITNESS: Well, Dr. Hunter, I mean, he</p> <p>23 just places it as something to show how high a</p> <p>24 Renaissance portrait -- you know, that the market</p> <p>25 has an interest in Renaissance portraits. In all</p>	<p style="text-align: right;">Page 36</p> <p>1 general, all things being equal, as between</p> <p>2 wood -- paintings on wood -- Renaissance paintings</p> <p>3 on wood and on canvas?</p> <p>4 A It really depends on the artist and the</p> <p>5 time. This is a moment when panel painting --</p> <p>6 paintings on wood panel are sort of transitioning</p> <p>7 to paintings on canvas.</p> <p>8 Dr. Hunter had mentioned the example of</p> <p>9 Titian in Venus where it's a very humid climate</p> <p>10 where panels react to the humidity very much.</p> <p>11 Canvas came in much earlier.</p> <p>12 In Florence where Botticelli, Bronzino,</p> <p>13 and Andrea del Sarto worked, it was more into the</p> <p>14 16 Century that you would -- and later in the</p> <p>15 16th Century that you would find canvas being used</p> <p>16 more. At this point, the time of Andrea del</p> <p>17 Sarto, the only paintings that would really be</p> <p>18 often painted on canvas directly would be things</p> <p>19 that were that being sent a great distance or that</p> <p>20 were being used in temporary festivals and the</p> <p>21 like.</p> <p>22 But, generally speaking, for portraits,</p> <p>23 panel -- I'm talking about the practice of it, not</p> <p>24 the value of it today, but, you know, panels were</p> <p>25 certainly the preferred support.</p>
<p style="text-align: right;">Page 35</p> <p>1 fairness to him, he's not really using it as a</p> <p>2 close comparable to the work, but it's kind of --</p> <p>3 you know, it's like looking at, you know, a</p> <p>4 one-story building and pointing to the Empire</p> <p>5 State Building and say, well, buildings can go</p> <p>6 that high.</p> <p>7 So I don't think he's intending -- I'm</p> <p>8 sorry to be interpreting what someone else's --</p> <p>9 Dr. Hunter's appraisal is, but I don't find it to</p> <p>10 be a useful comparable in that's it's really</p> <p>11 something of a different moment, of a, you know,</p> <p>12 artist of a different caliber and one in a very</p> <p>13 different condition.</p> <p>14 BY MR. PRESS:</p> <p>15 Q Okay. And turning to the Bronzino, did</p> <p>16 you mention earlier that you did some scholarship</p> <p>17 yourself on Bronzino?</p> <p>18 A Yes, I wrote my doctoral thesis on</p> <p>19 Bronzino, and I'm one of the world specialists on</p> <p>20 the artist, I'd say.</p> <p>21 Q Oh, another thing, the Botticelli, was</p> <p>22 that on canvas or was that on wood?</p> <p>23 A It's on a wood panel, yes.</p> <p>24 Q And is -- in general, are wood panels --</p> <p>25 what different valuation would you expect in</p>	<p style="text-align: right;">Page 37</p> <p>1 Q And in terms of value today for works on</p> <p>2 panel versus canvas, can you in general state any</p> <p>3 general conclusion to turn the value of works on</p> <p>4 wood versus works on canvas?</p> <p>5 A Well, generally speaking, panels are</p> <p>6 prized more in the art market. They're less</p> <p>7 susceptible -- assuming that the panel is</p> <p>8 structurally sound, less susceptible to the damage</p> <p>9 that occurs from lining of canvases and the</p> <p>10 flattening of them, as well as the implication,</p> <p>11 which is often the case, that a panel painting has</p> <p>12 been transferred to canvas which often results in</p> <p>13 the loss of not only vitality but actually</p> <p>14 physical components of the painting.</p> <p>15 So, for example, the impasto, which is</p> <p>16 sort of the raised three-dimensional quality of</p> <p>17 the painting, is often lost over the years on a</p> <p>18 canvas painting. If you think of canvas like --</p> <p>19 you know, it's cotton normally. It's like what a</p> <p>20 T-shirt would look like with paint on it after</p> <p>21 500 years; it has to be relined and treated, so it</p> <p>22 loses quite a lot; whereas a wood panel, assuming</p> <p>23 it hasn't been greatly damaged from changes in</p> <p>24 humidity and the like, often preserves a paint</p> <p>25 surface more regularly.</p>



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<p style="text-align: right;">Page 38</p> <p>1 Q Okay. And so as to the Bronzino, in</p> <p>2 Dr. Hunter's list of comparables, what do you know</p> <p>3 about the condition of that painting?</p> <p>4 A Well, I examined it on more than one</p> <p>5 occasion; certainly at its sale at Christie's but</p> <p>6 also privately before the sale in the presence of</p> <p>7 its former owner, and both to determine its</p> <p>8 attribution to Bronzino and on behalf of a</p> <p>9 potential client, so I looked at it extremely</p> <p>10 carefully. It's in truly an exceptional</p> <p>11 condition. I know Dr. Hunter mentioned it had a</p> <p>12 crack in it. It's a very, very fine seam where</p> <p>13 the two pieces of the wood panel had been joined,</p> <p>14 and there is some restoration on it, but really</p> <p>15 quite minor. It was in really superb condition.</p> <p>16 And I've seen it subsequently.</p> <p>17 Q And the Raphael painting that's at the</p> <p>18 bottom of this page on page 28 is in -- how does</p> <p>19 Raphael as an artist compare to Andrea del Sarto</p> <p>20 in its reception by the art world?</p> <p>21 A Well, Raphael is one of the giants of the</p> <p>22 Renaissance. Leonardo, Raphael, Michelangelo,</p> <p>23 these are the three great artists that are the</p> <p>24 focus of the High Renaissance and of art history,</p> <p>25 so it's -- he's -- work by him is in a different</p>	<p style="text-align: right;">Page 40</p> <p>1 the subject painting as far as, you know, my</p> <p>2 determination was not, so...</p> <p>3 BY MR. PRESS:</p> <p>4 Q Okay. And the Fra Bartolomeo painting</p> <p>5 that's in the comps here, was that oil or was that</p> <p>6 on canvas?</p> <p>7 MR. NIKAS: Objection.</p> <p>8 ARBITRATOR KRAMER: That's sustained.</p> <p>9 MR. PRESS: I'm not going to ask him</p> <p>10 anything more. I'm just asking --</p> <p>11 ARBITRATOR KRAMER: It's not in his</p> <p>12 report.</p> <p>13 MR. PRESS: Okay. That's fine. I can</p> <p>14 point it out, too.</p> <p>15 ARBITRATOR KRAMER: Is it in his report?</p> <p>16 MR. PRESS: It's not in his report, but</p> <p>17 it's here, it's written here. That's fine, I can</p> <p>18 say it myself in argument.</p> <p>19 ARBITRATOR KRAMER: Okay.</p> <p>20 BY MR. PRESS:</p> <p>21 Q Okay. Now, I want you to turn to -- can</p> <p>22 you turn to Tab 3 in the binder in front of you?</p> <p>23 A All right.</p> <p>24 Q Okay. Do you know who Anne Frances Moore</p> <p>25 is?</p>
<p style="text-align: right;">Page 39</p> <p>1 league.</p> <p>2 Q A different league than del Sarto?</p> <p>3 A Than del Sarto.</p> <p>4 Q Okay. And do you think that was an</p> <p>5 appropriate comp for a del Sarto painting at issue</p> <p>6 in this suit?</p> <p>7 A Again, I think it's put in the context of</p> <p>8 saying this is what a Renaissance portrait can</p> <p>9 achieve, especially one that's on canvas. And the</p> <p>10 Raphael painting as far as we know is painted on</p> <p>11 canvas because it was being sent over some</p> <p>12 distance. I mean, it's just not -- I don't find</p> <p>13 it appropriate because it's by so much of a more</p> <p>14 important artist.</p> <p>15 Q And as to the Bronzino, do you think that</p> <p>16 is an appropriate comp for the del Sarto painting</p> <p>17 at issue in this case?</p> <p>18 A Well, I think --</p> <p>19 MR. NIKAS: Objection; he doesn't call for</p> <p>20 that opinion in his report.</p> <p>21 ARBITRATOR KRAMER: I'll overrule that.</p> <p>22 Let's move on.</p> <p>23 THE WITNESS: I think choosing a Bronzino</p> <p>24 painting can be appropriate. Just this painting</p> <p>25 was in such exceptionally fine condition, whereas</p>	<p style="text-align: right;">Page 41</p> <p>1 A Yes.</p> <p>2 Q Who is that?</p> <p>3 A She is an appraiser and someone that I</p> <p>4 know personally for some years and former museum</p> <p>5 director, a specialist in mostly American</p> <p>6 portraits.</p> <p>7 Q Is she -- was she a specialist in Old</p> <p>8 Masters paintings, to your knowledge?</p> <p>9 A Not to my knowledge.</p> <p>10 Q And what -- do you know of any connection</p> <p>11 between her and Virginia Bonito?</p> <p>12 A I believe they're friends of longstanding.</p> <p>13 Virginia received her doctorate I believe from the</p> <p>14 Institute of Fine Arts and was a classmate of a</p> <p>15 man named Michael Mezzatesta. And they were both</p> <p>16 fellows at the American Academy in Rome. Michael</p> <p>17 Mezzatesta is the former husband of Anne Moore,</p> <p>18 and I believe they've been friends for over</p> <p>19 30 years or more or 40 years.</p> <p>20 Q And does -- looking at the title of this</p> <p>21 report, it says retail replacement value of</p> <p>22 appraisal report for insurance inventory purposes.</p> <p>23 Do you see that?</p> <p>24 A I do.</p> <p>25 Q Okay. And what is the nature of an</p>



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<p style="text-align: right;">Page 42</p> <p>1 appraisal for insurance inventory purposes?</p> <p>2 MR. NIKAS: I object to this testimony.</p> <p>3 He hasn't offered an opinion that he's trying to</p> <p>4 elicit here. There's literally nothing about it.</p> <p>5 ARBITRATOR KRAMER: It's not in his</p> <p>6 report. Why should he testify to things that</p> <p>7 weren't in his report?</p> <p>8 MR. PRESS: Okay. I mean, it was</p> <p>9 something that was presented and I think he can</p> <p>10 comment on it.</p> <p>11 ARBITRATOR KRAMER: Presented by whom and</p> <p>12 to where?</p> <p>13 MR. PRESS: I don't believe that this --</p> <p>14 this report that the -- Anne Frances Moore report</p> <p>15 wasn't in the -- it wasn't in the other reports</p> <p>16 either, but we heard about it, so I think that's</p> <p>17 something that we can comment on.</p> <p>18 ARBITRATOR KRAMER: It wasn't in what</p> <p>19 other reports?</p> <p>20 MR. PRESS: It certainly wasn't in</p> <p>21 Dr. Hunter's report.</p> <p>22 MR. NIKAS: The reason I presented it to</p> <p>23 Dr. Hunter is because they used that report to</p> <p>24 criticize the opinions that he reached, so I asked</p> <p>25 him if the respondent's argument that this report</p>	<p style="text-align: right;">Page 44</p> <p>1 happy to have it, you know, not considered at all,</p> <p>2 that's fine with me.</p> <p>3 But since it's been raised and there was</p> <p>4 some testimony about it, I think that I should be</p> <p>5 able to have my witness comment on it.</p> <p>6 ARBITRATOR KRAMER: Okay. Overruled for</p> <p>7 the time being. Let's move on.</p> <p>8 BY MR. PRESS:</p> <p>9 Q I just want to ask about what -- the</p> <p>10 question was what is an appraisal for insurance</p> <p>11 inventory purposes?</p> <p>12 THE WITNESS: I'm not quite sure what the</p> <p>13 inventory part means. Insurance purposes</p> <p>14 basically presupposes that one is going to obtain</p> <p>15 insurance on a property and one will then get</p> <p>16 what's called a retail replacement value</p> <p>17 appraisal, which is the idea that if you had to go</p> <p>18 out to tomorrow to buy that item, what it would</p> <p>19 cost.</p> <p>20 BY MR. PRESS:</p> <p>21 Q Okay. And is there a distinction between</p> <p>22 a retail replacement value appraisal and a fair</p> <p>23 market value appraisal under USPAP guidelines?</p> <p>24 MR. NIKAS: Same objection; it's not</p> <p>25 offered in this report.</p>
<p style="text-align: right;">Page 43</p> <p>1 there undermined his or related to his were</p> <p>2 accurate or not.</p> <p>3 ARBITRATOR KRAMER: And that was in the</p> <p>4 briefing?</p> <p>5 MR. NIKAS: Exactly. They used that</p> <p>6 report, 1.5 report, which wasn't -- our expert</p> <p>7 wasn't part of our report -- to challenge</p> <p>8 Dr. Hunter, and so we picked directly up on their</p> <p>9 argument and said are their arguments correct, and</p> <p>10 he testified that their arguments were not</p> <p>11 correct.</p> <p>12 But Dr. Simon gave absolutely no opinion</p> <p>13 whatsoever related to any of those methods, not</p> <p>14 the 1.5, not the 30 million, not Anne Moore,</p> <p>15 nothing.</p> <p>16 MR. PRESS: And I'd like to correct that.</p> <p>17 Dr. Hunter doesn't mention this report in any way</p> <p>18 in his --</p> <p>19 ARBITRATOR KRAMER: The Anne Moore report?</p> <p>20 MR. PRESS: "This" being the Anne Moore</p> <p>21 report, but he mentioned that he found it, and he</p> <p>22 said it's 30 million, and they brought it and they</p> <p>23 presented it. So I think it's something that</p> <p>24 needs to be addressed here. It's not within the</p> <p>25 scope of either of these experts' reports. I'm</p>	<p style="text-align: right;">Page 45</p> <p>1 ARBITRATOR KRAMER: Overruled.</p> <p>2 THE WITNESS: It's a huge difference. I</p> <p>3 mean, retail replacement value appraisal is</p> <p>4 usually -- do not require the level of</p> <p>5 documentation, and they also rarely come under any</p> <p>6 scrutiny. It's -- the only factor really is how</p> <p>7 much someone would want to be paying for a premium</p> <p>8 for insurance. And often enough -- such --</p> <p>9 appraisals are done more as sales tools to show</p> <p>10 that something has been appraised for a certain</p> <p>11 amount of money.</p> <p>12 BY MR. PRESS:</p> <p>13 Q And did you -- did you come to learn that</p> <p>14 Winston Art Group had performed an earlier</p> <p>15 appraisal prior to Dr. Hunter?</p> <p>16 MR. NIKAS: I object to this as well.</p> <p>17 This is not in his report that he cross-examined</p> <p>18 Dr. Hunter, and so having an expert testify about</p> <p>19 another report that in no way is addressed in his</p> <p>20 expert opinion is a trial by ambush.</p> <p>21 MR. PRESS: Absolutely not. We only got</p> <p>22 this report after Dr. Simon did his report. As</p> <p>23 you may recall, Mr. Arbitrator, we had to seek and</p> <p>24 demand it and get a copy of it and after Mr. Simon</p> <p>25 already issued his report. It's central</p>



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<p style="text-align: right;">Page 46</p> <p>1 importance to this arbitrate.</p> <p>2 MR. NIKAS: And if I may, sir, they never</p> <p>3 sought to supplement his expert report with a</p> <p>4 comment or any opinion on it, and to show up today</p> <p>5 at trial and say it's of central importance for</p> <p>6 their expert to testify about something he never</p> <p>7 offered in his and they didn't seek need to</p> <p>8 supplement his report to address is highly</p> <p>9 inappropriate.</p> <p>10 ARBITRATOR KRAMER: I think that's right.</p> <p>11 You could have. I take it that the testimony is</p> <p>12 going -- you're going to ask him as a former</p> <p>13 president of the organization whether the various</p> <p>14 violations of the rules that you suggested are</p> <p>15 important, and you could have -- that could have</p> <p>16 been in a written opinion after you had that</p> <p>17 report. So I think Mr. Nikas is right that you</p> <p>18 should have supplemented the report. You can't</p> <p>19 come in here today and give opinions that</p> <p>20 Mr. Nikas has not had a chance to prepare for.</p> <p>21 MR. PRESS: Okay. I mean, I think it's</p> <p>22 clearly fair game giving the -- that this</p> <p>23 appraisal, in fact, I don't think we need to</p> <p>24 submit a supplemental report. I think it's</p> <p>25 ultimately --</p>	<p style="text-align: right;">Page 48</p> <p>1 me.</p> <p>2 MR. PRESS: It's not helpful to you, okay.</p> <p>3 Now, what I would like to ask him about is</p> <p>4 Dr. Hunter's testimony yesterday, which I didn't</p> <p>5 know about before, okay. We didn't have any prior</p> <p>6 discussion about it concerning his contribution to</p> <p>7 this report, a phone call. I'd like to ask his</p> <p>8 impression of that.</p> <p>9 ARBITRATOR KRAMER: Which contribution?</p> <p>10 MR. PRESS: So yesterday for the first</p> <p>11 time, we heard testimony from Dr. Hunter that he</p> <p>12 had a phone call with Geza von Habsburg and that</p> <p>13 he says was his contribution to this report, and</p> <p>14 the contribution is noted in the report, okay.</p> <p>15 That's new information. I wouldn't have had time</p> <p>16 to prepare an expert report about that. That's a</p> <p>17 new piece of information I learned yesterday.</p> <p>18 MR. NIKAS: If may, sir, number one, the</p> <p>19 report that they had he could have supplemented</p> <p>20 Dr. Simon's report with. The Geza von Habsburg</p> <p>21 report references Mr. Hunter's involvement with</p> <p>22 that report, so they had the opportunity to</p> <p>23 address that.</p> <p>24 Number two, Mr. Press had the opportunity</p> <p>25 to take Dr. Hunter's deposition, and he would have</p>
<p style="text-align: right;">Page 47</p> <p>1 ARBITRATOR KRAMER: It's not the basis of</p> <p>2 what you purposed to be his expert testimony. It</p> <p>3 could have been.</p> <p>4 MR. PRESS: Well, no, no, no. We</p> <p>5 proposed -- we put in a rebuttal report after we</p> <p>6 received Dr. Hunter's report, but we didn't have</p> <p>7 this at the time, and you're saying that we could</p> <p>8 have submitted a supplemental report, but I</p> <p>9 also -- I thought it was certainly fair game to</p> <p>10 come here and talk about this document that we</p> <p>11 looked at extensively yesterday.</p> <p>12 ARBITRATOR KRAMER: But not have an expert</p> <p>13 testify about it. You made your points about it</p> <p>14 in the cross-examination of Dr. Hunter.</p> <p>15 MR. PRESS: That's true. I think there</p> <p>16 are a few things that --</p> <p>17 ARBITRATOR KRAMER: And it's not helpful</p> <p>18 to me to have Dr. Simon testify about things that</p> <p>19 can't be properly cross-examined.</p> <p>20 MR. PRESS: I only wanted to ask him if he</p> <p>21 agreed with the statement in the report.</p> <p>22 ARBITRATOR KRAMER: What statement in the</p> <p>23 report?</p> <p>24 MR. PRESS: In Geza von Habsburg's report.</p> <p>25 ARBITRATOR KRAMER: That's not helpful to</p>	<p style="text-align: right;">Page 49</p> <p>1 testified what that involvement was that was</p> <p>2 stated on the face of the Geza von Habsburg</p> <p>3 report, but he failed to depose Dr. Hunter. So</p> <p>4 for him to show up today and say this is new</p> <p>5 information that he could have gotten in a</p> <p>6 deposition, that he could have learned about</p> <p>7 beforehand, and now get an expert to testify,</p> <p>8 because he doesn't say anything about it in his</p> <p>9 report, presents the same exact trial by ambush</p> <p>10 problem. It's highly prejudicial. We didn't come</p> <p>11 prepared to cross-examine the expert on things</p> <p>12 that he didn't put in his report.</p> <p>13 ARBITRATOR KRAMER: And I'll sustain that</p> <p>14 objection. It's not helpful to me. I think</p> <p>15 you've cross-examined Dr. Hunter as I excepted you</p> <p>16 to, and we talked about that in the conference.</p> <p>17 MR. PRESS: Okay.</p> <p>18 ARBITRATOR KRAMER: So let's move on.</p> <p>19 MR. PRESS: Okay.</p> <p>20 BY MR. PRESS:</p> <p>21 Q Dr. Simon, are you aware that the painting</p> <p>22 in question was sold in Sotheby's Old Masters</p> <p>23 auction in January 27, 2022?</p> <p>24 A Yes, I am.</p> <p>25 Q Okay. And did you view that auction</p>



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<p style="text-align: right;">Page 50</p> <p>1 yourself?</p> <p>2 A I was in the attendance, and I viewed the</p> <p>3 exhibition beforehand.</p> <p>4 Q Okay. And did you see the painting</p> <p>5 exhibited by Sotheby's prior to the auction?</p> <p>6 A Yes.</p> <p>7 Q And what were your observations at that</p> <p>8 time about the painting?</p> <p>9 A It was --</p> <p>10 MR. NIKAS: Objection to the testimony as</p> <p>11 well, sir. This is not in the report at all, and</p> <p>12 for him to comment on the Sotheby's auction is,</p> <p>13 again, highly inappropriate and prejudicial. We</p> <p>14 weren't prepared to cross-examine him on an</p> <p>15 opinion about the Sotheby's auction that he didn't</p> <p>16 put in his report. And again, if Mr. Press wanted</p> <p>17 to supplement the report with commentary if he</p> <p>18 knew about it, he could have asked me to do so, he</p> <p>19 didn't.</p> <p>20 MR. PRESS: This is a factual thing. He</p> <p>21 went and he saw it.</p> <p>22 ARBITRATOR KRAMER: But he's here to</p> <p>23 testify as an expert and give me his opinions and</p> <p>24 help me determine what the damages are to be or</p> <p>25 not to be.</p>	<p style="text-align: right;">Page 52</p> <p>1 the sale of the painting?</p> <p>2 A Yes.</p> <p>3 Q And what was that?</p> <p>4 A \$1,800,000.</p> <p>5 Q Okay. And at the time of the auction,</p> <p>6 were you aware of any litigation concerning the</p> <p>7 painting?</p> <p>8 MR. NIKAS: Objection.</p> <p>9 ARBITRATOR KRAMER: Let him answer that.</p> <p>10 Were you aware of any litigation?</p> <p>11 THE WITNESS: No.</p> <p>12 BY MR. PRESS:</p> <p>13 Q Okay. As between an appraisal and a</p> <p>14 public sale by auction, which is a better</p> <p>15 indication of the fair market value of the</p> <p>16 painting?</p> <p>17 MR. NIKAS: Objection.</p> <p>18 ARBITRATOR KRAMER: Overruled.</p> <p>19 THE WITNESS: An actual sale is much more</p> <p>20 appropriate for values. It is essentially the</p> <p>21 definition of fair market values, what someone is</p> <p>22 willing to pay and it's without any constraint.</p> <p>23 BY MR. PRESS:</p> <p>24 Q In your opinion, did the Sotheby's sale</p> <p>25 establish the fair market value of the painting?</p>
<p style="text-align: right;">Page 51</p> <p>1 MR. PRESS: Okay.</p> <p>2 ARBITRATOR KRAMER: So I'll think we'll</p> <p>3 move on.</p> <p>4 MR. PRESS: Okay. I mean -- all right.</p> <p>5 ARBITRATOR KRAMER: If he was going to</p> <p>6 testify about the condition of a painting based on</p> <p>7 having seen it at Sotheby's, that's something that</p> <p>8 could have in an opinion.</p> <p>9 MR. PRESS: Well --</p> <p>10 ARBITRATOR KRAMER: He's here as an</p> <p>11 expert, not as a fact witness.</p> <p>12 MR. PRESS: It just so happens that he had</p> <p>13 some factual information that he obtained because</p> <p>14 he was in attendance.</p> <p>15 ARBITRATOR KRAMER: I suspect if that had</p> <p>16 been in a report, he would have been deposed about</p> <p>17 it, so let's move on.</p> <p>18 MR. PRESS: No, no. The reports were</p> <p>19 issued long before this happened. This is a more</p> <p>20 recent occurrence.</p> <p>21 ARBITRATOR KRAMER: It could have been in</p> <p>22 a supplemental report.</p> <p>23 MR. PRESS: Okay. All right.</p> <p>24 BY MR. PRESS:</p> <p>25 Q Are you aware of what the hammer price was</p>	<p style="text-align: right;">Page 53</p> <p>1 MR. NIKAS: Objection. He didn't offer</p> <p>2 that opinion.</p> <p>3 ARBITRATOR KRAMER: Sustained.</p> <p>4 MR. PRESS: Okay. Then I have no further</p> <p>5 questions. Thank you.</p> <p>6 ARBITRATOR KRAMER: Dr. Simon --</p> <p>7 THE WITNESS: Yes, sir.</p> <p>8 ARBITRATOR KRAMER: -- would the filing of</p> <p>9 a lawsuit challenging the authenticity and the</p> <p>10 ownership of a painting three days before a</p> <p>11 Sotheby's auction affect the value of a painting?</p> <p>12 THE WITNESS: I think if it were</p> <p>13 publicized, absolutely. But in my sense, it's</p> <p>14 like the tree falling in the forest.</p> <p>15 ARBITRATOR KRAMER: You don't know if it</p> <p>16 was publicized or not, right?</p> <p>17 THE WITNESS: Well, to the extent that I'm</p> <p>18 aware of the art market and the sale and all that,</p> <p>19 I would have heard about it. It's a gossip-filled</p> <p>20 world.</p> <p>21 ARBITRATOR KRAMER: Okay. All right.</p> <p>22 Cross-examination?</p> <p>23 MR. NIKAS: Yes. If I can just take five</p> <p>24 minutes to run to the bathroom.</p> <p>25 ARBITRATOR KRAMER: Why don't we take a</p>



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<p style="text-align: right;">Page 54</p> <p>1 ten-minute break.</p> <p>2 (Whereupon, a break was taken.)</p> <p>3 ARBITRATOR KRAMER: Are we ready to</p> <p>4 proceed?</p> <p>5 MR. NIKAS: Ready.</p> <p>6 C R O S S - E X A M I N A T I O N</p> <p>7 BY MR. NIKAS:</p> <p>8 Q Good morning, Dr. Simon.</p> <p>9 A Good morning.</p> <p>10 Q Now, you testified a bit about the</p> <p>11 background of this case leading up to the</p> <p>12 settlement agreement; do you recall that?</p> <p>13 A The -- my experience in dealing with the</p> <p>14 painting.</p> <p>15 Q And with Mr. Peck and Mr. Greenberg?</p> <p>16 A The settlement agreement I have, you know,</p> <p>17 until today I had no cognizance of, so...</p> <p>18 Q So I'm want to explore what you understand</p> <p>19 this case to be about and your engagement.</p> <p>20 Are you aware from your engagement with</p> <p>21 Mr. Peck and Mr. Greenberg that this case arose</p> <p>22 out of my client, the claimants, threatening to</p> <p>23 sue Mr. Peck for engaging in an art finance ponzi</p> <p>24 scheme?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 56</p> <p>1 Mr. Peck.</p> <p>2 Q And were you aware when you were engaged</p> <p>3 by Mr. Peck in this case that you would be giving</p> <p>4 testimony against a former client of yours,</p> <p>5 Mr. Greenberg?</p> <p>6 A No.</p> <p>7 Q You weren't told that?</p> <p>8 A No, I was -- it's mentioned right here</p> <p>9 that there was a case, obviously, in that regard.</p> <p>10 The details of what this dispute is, is something</p> <p>11 beyond where I -- you know, my knowledge.</p> <p>12 Q So now knowing that, do you perceive it to</p> <p>13 be a conflict to give testimony against a former</p> <p>14 client related to the very subject matter of your</p> <p>15 engagement with that client?</p> <p>16 A No, not at all. I'm -- part of my report</p> <p>17 had to do with my -- facts -- factual issues. The</p> <p>18 other part had to do with Dr. Hunter's appraisal.</p> <p>19 I don't see it -- I don't see it in any way a</p> <p>20 conflict.</p> <p>21 Q You don't see giving testimony against</p> <p>22 your former client in a case about the work you</p> <p>23 advised that client on as a conflict?</p> <p>24 MR. PRESS: Objection; asked and answered.</p> <p>25 ARBITRATOR KRAMER: Overruled.</p>
<p style="text-align: right;">Page 55</p> <p>1 Q Are you aware that following that</p> <p>2 discussion and that threat, the parties settle</p> <p>3 case in settlement agreement under which the</p> <p>4 respondents were required to sell the del Sarto at</p> <p>5 issue here and use the proceeds to pay the</p> <p>6 settlement to my clients?</p> <p>7 A I'm aware that there was a settlement</p> <p>8 agreement. I haven't looked at it and the details</p> <p>9 of their dispute, the financial issues, is</p> <p>10 something beyond my cognizance.</p> <p>11 Q And are you aware that the arbitrator in</p> <p>12 this case has already found that the respondents</p> <p>13 breached their agreements and therefore this is</p> <p>14 just a trial about damages?</p> <p>15 A I know that the arbitrator reached a</p> <p>16 decision, but the details are -- no, I'm not aware</p> <p>17 of these -- to me finer points, but I guess</p> <p>18 they're crucial for what they're dealing with.</p> <p>19 Q Now, following your engagement by Mr. Peck</p> <p>20 and the experience you had with the work, you were</p> <p>21 engaged in this case, this actual litigation,</p> <p>22 right?</p> <p>23 A Well, I was engaged by Mr. Peck and</p> <p>24 Mr. Greenberg initially, and then engaged to</p> <p>25 write -- to prepare this statement that I did by</p>	<p style="text-align: right;">Page 57</p> <p>1 THE WITNESS: No.</p> <p>2 BY MR. NIKAS:</p> <p>3 Q Now, in your report, that's at Tab 18, you</p> <p>4 don't identify any comparables for this work,</p> <p>5 correct?</p> <p>6 A I didn't prepare an appraisal on the</p> <p>7 painting.</p> <p>8 Q Okay. And you heard Dr. Hunter testify at</p> <p>9 great length about the comparables that he put in</p> <p>10 his report, right?</p> <p>11 A I did.</p> <p>12 Q And you heard him describe the reasons he</p> <p>13 used those several comparables to reach a value</p> <p>14 about the painting, correct?</p> <p>15 A I do.</p> <p>16 Q And you didn't provide any opinion about</p> <p>17 the issues or the reasons these comparables were</p> <p>18 good comparables or bad comparables to rebut</p> <p>19 Dr. Hunter's testimony, correct?</p> <p>20 A I think -- I remember we just spoke about</p> <p>21 the issue of the condition of the painting which</p> <p>22 is relevant, but no, I would say that in terms of</p> <p>23 Dr. Hunter's appraisal I think it was properly</p> <p>24 prepared, but basically faulted on the fact that</p> <p>25 the condition is such a crucial issue and it was</p>



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<p style="text-align: right;">Page 58</p> <p>1 disregarded it was assumed to be in fine 2 condition. What he did, you know -- given that, I 3 think, very crucial caveat or issue, he prepared a 4 fine appraisal. 5 Q So with the exception of the caveat of the 6 condition of the del Sarto, which we'll get to in 7 a little bit, you think Dr. Hunter prepared a fine 8 appraisal; is that what you just said? 9 A Yes. 10 Q Now, you heard him, Dr. Hunter, describe 11 how he reached that \$15 million fair market value 12 for the work, correct? 13 A Correct. 14 Q Your report offers no competing valuation, 15 correct? 16 A Correct. 17 Q The report that you issued doesn't offer 18 an opinion about the actual condition of the work, 19 correct, the del Sarto? 20 A That's correct. 21 Q You say it's not clear, right? 22 A Correct. 23 Q You say that it's quite possible 24 restoration is required, but ultimately you don't 25 have an opinion one way or the other offered in</p>	<p style="text-align: right;">Page 60</p> <p>1 every time I saw the picture until it was sold at 2 Sotheby's, I believe it's by Andrea del Sarto. 3 It's just a question of what -- how the market -- 4 the market requires further confirmation in my 5 opinion. 6 Q Now, you don't offer a definitive opinion 7 about who the sitter is in the painting, correct? 8 A That's correct. 9 Q And you don't offer in your opinion, or in 10 your report, any opinions about other appraisals 11 of the work, correct? 12 A That's correct. I mean, I think in the 13 opinion -- I mean, as for the sitter, I'm not 14 quite sure whether I stated it overtly, but 15 it's -- I do mention it. It's speculative. The 16 opinion -- that it's Ottaviano de' Medici. That's 17 one of the statements of Virginia Bonito that I 18 did not find persuasive. 19 Q Well, we'll get to that in a minute, too. 20 With respect to Dr. Hunter's appraisal, 21 that's the only appraisal that you address in your 22 report, correct? 23 A Correct. 24 Q Now, with respect to Dr. Hunter's 25 appraisal, you give four opinions, right?</p>
<p style="text-align: right;">Page 59</p> <p>1 your report, right? 2 A What's in my report is in my report. 3 Q Okay. And in your report you don't offer 4 an opinion as to whether the work is, in fact, 5 authentic or not, correct? 6 A I think I did. I do believe the painting 7 is authentic. 8 Q You do believe it's authentic? 9 A Absolutely. 10 Q Okay. 11 A I mean, one thing that I think I indicated 12 though is that in terms of how the market 13 perceives the authenticity issue more work needed 14 to be done for the consultation with other 15 contemporary scholars was required in order for 16 the painting to achieve its proper value. 17 Q And ultimately -- 18 A Ultimately. 19 Q -- although you talk about that you don't 20 offer a definitive opinion in your report, you do 21 note those facts, however, correct? 22 A Yes. I'm not a definitive Andrea del 23 Sarto scholar. It's -- my opinion is, you know, 24 I've gone through my credentials, whatever, as a 25 specialist in the field from the beginning and</p>	<p style="text-align: right;">Page 61</p> <p>1 A I do. Okay. Let's take a look. 2 Yes. 3 Q Okay. Now, let's start with the 4 authorship and attribution. You say under that 5 section that more work needs to be done and needs 6 to be done to fully confirm the work, correct? 7 A Correct. 8 Q And that Dr. Hunter's appraisal overlooks 9 that fact; is that right? 10 A Correct. 11 Q And makes an assumption about authenticity 12 without acknowledging that fact? 13 A Yes. 14 Q That's number one. Number two, with 15 respect to the sitter on next the page of your 16 report you say that the identification of the 17 sitter is speculative? 18 A Correct. 19 Q And that Dr. Hunter's assumption that the 20 sitter is identified as accurate doesn't 21 acknowledge the dearth of information proving it 22 to be so; is that accurate? 23 A Yes. 24 Q Now, we talked a moment ago about the fact 25 that the parties had a settlement agreement,</p>



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<p style="text-align: right;">Page 62</p> <p>1 correct?</p> <p>2 A Yes.</p> <p>3 Q And you never reviewed that settlement</p> <p>4 agreement before?</p> <p>5 A Correct.</p> <p>6 Q Let's turn to Tab 1 in your binder,</p> <p>7 please. The first page of the document says</p> <p>8 "settlement agreement;" do you see that?</p> <p>9 A Correct.</p> <p>10 Q So if you could, please, turn with me to</p> <p>11 page 4, section 6. Bottom of the page it says,</p> <p>12 representations by ACG, and that's Mr. Peck. ACG</p> <p>13 represents the following facts to be true. "E,"</p> <p>14 on the next page, the work is an authentic work of</p> <p>15 art by Andrea del Sarto as described above in</p> <p>16 section 1A.</p> <p>17 Do you see that?</p> <p>18 A I do.</p> <p>19 Q And if you turn back to Section 1A, which</p> <p>20 is the top of the page 2, it says, Andrea del</p> <p>21 Sarto, Ottaviano de' Medici, and so forth; do you</p> <p>22 see that?</p> <p>23 A I do.</p> <p>24 Q And Ottaviano de' Medici, the title, and</p> <p>25 that's supposed to be sitter according to this</p>	<p style="text-align: right;">Page 64</p> <p>1 of the settlement agreement, your name appears.</p> <p>2 Were you consulted about having your name included</p> <p>3 in the agreement?</p> <p>4 THE WITNESS: No, No, I didn't know there</p> <p>5 was a settlement agreement, so...</p> <p>6 ARBITRATOR KRAMER: Okay.</p> <p>7 BY MR. NIKAS:</p> <p>8 Q Now, so you didn't understand when</p> <p>9 criticizing Dr. Hunter's assumptions regarding</p> <p>10 authenticity and sitter that those assumptions</p> <p>11 came from the contractually binding representation</p> <p>12 in this agreement?</p> <p>13 MR. PRESS: Objection.</p> <p>14 THE WITNESS: That's correct.</p> <p>15 MR. PRESS: Objection; argumentative.</p> <p>16 ARBITRATOR KRAMER: Overruled.</p> <p>17 MR. PRESS: It's a different point.</p> <p>18 BY MR. NIKAS:</p> <p>19 Q Now, in your profession, are you aware of</p> <p>20 an appraiser rule that says if an individual</p> <p>21 breaches his contractual obligations with respect</p> <p>22 to authenticity and the identity of the sitter,</p> <p>23 you're allowed disregard when preparing an</p> <p>24 appraisal in a litigation about damages?</p> <p>25 A Can you repeat that question?</p>
<p style="text-align: right;">Page 63</p> <p>1 representation, right?</p> <p>2 A Right.</p> <p>3 Q Now, when you issued your expert report,</p> <p>4 were you told by Mr. Peck that he had promised or</p> <p>5 represented the authenticity and accurate</p> <p>6 description of this painting?</p> <p>7 A No.</p> <p>8 Q Were you informed that, in fact, the basis</p> <p>9 for Dr. Hunter's assumption of authenticity and</p> <p>10 accuracy of the sitter was the fact that Mr. Peck</p> <p>11 represented those facts to be true?</p> <p>12 MR. PRESS: Objection; argumentative.</p> <p>13 ARBITRATOR KRAMER: Overrule.</p> <p>14 THE WITNESS: I was not aware of this</p> <p>15 consignment agreement and the statement of</p> <p>16 authorship. As I said, I agree with the</p> <p>17 authorship of the painting. I don't think that's</p> <p>18 really an issue. It's really a market perception</p> <p>19 that I'm proposing. The same as Dr. Hunter</p> <p>20 testified that the identification of the sitter as</p> <p>21 Ottaviano de Medici would be a value added thing,</p> <p>22 not something -- the question mark about it is not</p> <p>23 something that would take away its -- lower the</p> <p>24 value.</p> <p>25 ARBITRATOR KRAMER: On the top of page two</p>	<p style="text-align: right;">Page 65</p> <p>1 Q Sure.</p> <p>2 Now, there's no appraiser rule, is there,</p> <p>3 that would require Dr. Hunter to disregard these</p> <p>4 representations when preparing an appraisal report</p> <p>5 for a litigation, correct?</p> <p>6 A Well, first, I don't know that there's a</p> <p>7 separate -- any kind of rule specifying appraisals</p> <p>8 for litigation as different from any other</p> <p>9 appraisals. So -- and the idea that one would</p> <p>10 disregard information, I don't think this ever</p> <p>11 gets discussed really.</p> <p>12 Q Sure. I just want to understand the rules</p> <p>13 that govern appraisals because Dr. Hunter prepared</p> <p>14 a report for this litigation.</p> <p>15 You're aware of that, yes?</p> <p>16 MR. PRESS: I'm going to have to object to</p> <p>17 this. He didn't want my witness to talk about</p> <p>18 rules of appraisal and now he's asking about rules</p> <p>19 of appraisal.</p> <p>20 ARBITRATOR KRAMER: Overruled. This is</p> <p>21 cross-examination.</p> <p>22 BY MR. NIKAS:</p> <p>23 Q Now, when you criticized Dr. Hunter for</p> <p>24 making the assumption of authenticity and the</p> <p>25 identity of the sitter, you were basing that on</p>



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<p style="text-align: right;">Page 66</p> <p>1 the appraiser rule that governs the profession,  2 correct?</p> <p>3 A This is not specific, those specific  4 things that I singled out. Really the salient  5 issue had to do with the condition. The  6 authorship, the identity of the sitter in my mind  7 makes very little difference in terms of what the  8 value of the painting is. The -- to me the  9 identification of Ottaviano de' Medici was kind of  10 something that is part of the misrepresentations  11 by Dr. Bonito to say that was carried forward in  12 all these documents. Really, the crucial issue in  13 terms of the criteria for the value that's assumed  14 that I think is at fault here is really the  15 question of condition.</p> <p>16 Q Okay. So we'll get to condition. So what  17 I wanted to understand is we can then disregard  18 your commentary about Dr. Hunter's assumptions  19 regarding authenticity?</p> <p>20 A I don't think that's an issue.</p> <p>21 Q And can we disregard your opinion about  22 the comparables with respect to valuation?</p> <p>23 A You see, the valuation, we're talking  24 about something in terms of what the value is in  25 the marketplace, and the -- my opinion that it's</p>	<p style="text-align: right;">Page 68</p> <p>1 your objection?</p> <p>2 MR. PRESS: Because he said a bunch of  3 things about disregarding and now he's moving --  4 it's speech that he made, so I'm objecting to  5 that.</p> <p>6 ARBITRATOR KRAMER: Can you rephrase the  7 question, please.</p> <p>8 MR. NIKAS: Sure.</p> <p>9 BY MR. NIKAS:</p> <p>10 Q I want to talk now about comparables since  11 you've already told us about authenticity and the  12 sitter. Understood?</p> <p>13 A Yes.</p> <p>14 Q Great. Now, in that section of your  15 report you say it's not clear what Dr. Hunter knew  16 about the condition of the works he identified as  17 comparable, correct?</p> <p>18 A That's true.</p> <p>19 Q And, first of all, his report was prepared  20 as an appraisal under USPAP standards, correct?</p> <p>21 A Yes.</p> <p>22 Q You didn't prepare a competing appraisal?</p> <p>23 A Correct.</p> <p>24 Q Your report doesn't purport to comply with  25 USPAP, correct?</p>
<p style="text-align: right;">Page 67</p> <p>1 by Andrea del Sarto and whatever is written in the  2 agreement is one thing, but in terms of what's  3 required in terms of the market perception and  4 what people would demand in terms of what a  5 painting is worth, that I found to be  6 insufficient.</p> <p>7 So if -- and this is a question for you  8 two lawyers to figure out if this document and  9 this statement of it is more important than these  10 other questions, so be it. It's not my purview to  11 comment on it.</p> <p>12 Q Let me just put a finer point on that. If  13 the law requires us to accept the representations  14 in this document as true and accurate, that it's  15 an Andrea del Sarto and that's the sitter as  16 identified here, there's no appraisal rule that  17 says you're supposed to disregard the --</p> <p>18 A No, we follow the law.</p> <p>19 Q There we go. Thank you very much.</p> <p>20 Now, so we're setting your -- we're  21 disregarding your comment on authenticity and  22 sitter. I want to focus for a minute on the  23 comparables section that you identified.</p> <p>24 MR. PRESS: Objection to form.</p> <p>25 ARBITRATOR KRAMER: What's the nature of</p>	<p style="text-align: right;">Page 69</p> <p>1 A It's not an appraisal.</p> <p>2 Q And, therefore, doesn't even purport  3 comply with USPAP because it doesn't need to?</p> <p>4 A Correct.</p> <p>5 Q Now, you heard Dr. Hunter testify about  6 all of the comparables at length, correct?</p> <p>7 A I did.</p> <p>8 Q And you, in your report, offer no opinion  9 about those matters, correct?</p> <p>10 A Correct.</p> <p>11 Q Now, you also heard him describe how he  12 used his judgment to assess that group of  13 comparables to provide ultimately an opinion that  14 the work was worth \$15 million. You heard him  15 talk about that, right?</p> <p>16 A Yes.</p> <p>17 Q And your report doesn't address or offer  18 an opinion that addresses those direct issues,  19 correct?</p> <p>20 A Correct.</p> <p>21 Q Now, fourth, and finally, let's talk about  22 the condition of the work in your opinion in that  23 respect, all right?</p> <p>24 A Yes.</p> <p>25 Q Great. Now, are you aware -- let's get</p>



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<p style="text-align: right;">Page 70</p> <p>1 your opinion out there for just a minute. You say</p> <p>2 Dr. Hunter's report assumes good condition when,</p> <p>3 in fact, that's a hypothetical assumption,</p> <p>4 correct?</p> <p>5 A Correct.</p> <p>6 Q And from the report, your -- the report</p> <p>7 you drafted, your opinion is the condition is not</p> <p>8 clear, correct?</p> <p>9 A I mean, I stated that it was not clear to</p> <p>10 me and that further information was needed. In</p> <p>11 my -- that was my advice to Mr. Peck and</p> <p>12 Mr. Greenberg that more attention needed to made.</p> <p>13 My own opinion is that it was a -- the</p> <p>14 reason that prompted that inquiry was that I was</p> <p>15 not satisfied with the opinion. I did not think</p> <p>16 it was in good condition.</p> <p>17 Q You say in your report that the condition</p> <p>18 of the del Sarto is not clear, correct?</p> <p>19 A Correct.</p> <p>20 Q And you say --</p> <p>21 A No, excuse me. Where --</p> <p>22 Q Under the comparable section, you say,</p> <p>23 Raphael -- four lines up from the bottom, a far</p> <p>24 more celebrated artist than Andrea del Sarto on</p> <p>25 panel. As indicated above, the actual condition</p>	<p style="text-align: right;">Page 72</p> <p>1 the picture in the marketplace or whether it's</p> <p>2 kind of a hopeless situation, which is -- that's</p> <p>3 really the issue whether it could be improved, or</p> <p>4 whether what it is, is what you get and it's</p> <p>5 permanently kind of compromised.</p> <p>6 Q And you have no idea what the answers to</p> <p>7 these questions are because you haven't seen it?</p> <p>8 A No, these needed to be, and I'm sure</p> <p>9 whoever brought the picture is dealing with that</p> <p>10 right now.</p> <p>11 ARBITRATOR KRAMER: Can I understand the</p> <p>12 chronology of your involvement. Back in 2019,</p> <p>13 October or November, you went to see the painting?</p> <p>14 THE WITNESS: Correct.</p> <p>15 ARBITRATOR KRAMER: Dr. Modestini --</p> <p>16 THE WITNESS: She went on the second visit</p> <p>17 in November.</p> <p>18 ARBITRATOR KRAMER: And then you had an</p> <p>19 engagement letter with Mr. Peck and with</p> <p>20 Mr. Greenberg.</p> <p>21 THE WITNESS: Prior to that.</p> <p>22 ARBITRATOR KRAMER: Prior to that.</p> <p>23 What was your involvement -- did you tell</p> <p>24 us that as of December 2019 you were no longer</p> <p>25 involved?</p>
<p style="text-align: right;">Page 71</p> <p>1 of the subject property is not clear.</p> <p>2 A Right.</p> <p>3 Q Correct.</p> <p>4 And then you say under the condition</p> <p>5 section that it's quite possible that the work</p> <p>6 needs restoration, correct?</p> <p>7 A I'm sorry. Where are you under?</p> <p>8 Q Excuse me. Under the conclusion section.</p> <p>9 You say in the final paragraph, the painting would</p> <p>10 have to be carefully examined, its actual</p> <p>11 condition determined, and quite possibly for the</p> <p>12 need for further conservation, correct?</p> <p>13 A Yes.</p> <p>14 Q So you don't offer an opinion about the</p> <p>15 actual condition in this report, correct?</p> <p>16 A I think I stated clearly that it was not</p> <p>17 definitely determinable without being properly</p> <p>18 examined.</p> <p>19 Q Precisely. You need to --</p> <p>20 A However, that -- saying that indicates</p> <p>21 that the picture is not in excellent condition,</p> <p>22 you know, it needs to be studied and possibly</p> <p>23 treated. The possibility of the treatment really</p> <p>24 had more to do with whether a treatment would</p> <p>25 benefit the -- it could improve the condition of</p>	<p style="text-align: right;">Page 73</p> <p>1 THE WITNESS: I was no longer involved. I</p> <p>2 wrote to Mr. Peck, what's happening with the</p> <p>3 picture. Then the pandemic happened. I wasn't</p> <p>4 doing much of anything, but periodically I would</p> <p>5 send a note and say what's going on, and I</p> <p>6 basically got no answer.</p> <p>7 ARBITRATOR KRAMER: And when were you</p> <p>8 retained to give the expert opinion?</p> <p>9 THE WITNESS: Oh, maybe just a day -- a</p> <p>10 couple of days before I gave the opinion, and that</p> <p>11 was 2021.</p> <p>12 ARBITRATOR KRAMER: I didn't see a date on</p> <p>13 them. Am I missing a date?</p> <p>14 THE WITNESS: It was November of 2021, I</p> <p>15 think. I guess I didn't date it.</p> <p>16 ARBITRATOR KRAMER: Dr. Hunter's report is</p> <p>17 dated November 5, 2021.</p> <p>18 THE WITNESS: Well, it was later in that</p> <p>19 month, I think.</p> <p>20 ARBITRATOR KRAMER: In November of 2021,</p> <p>21 right. In between November 2019 and November of</p> <p>22 2021, did you see the painting?</p> <p>23 THE WITNESS: No.</p> <p>24 ARBITRATOR KRAMER: Thank you.</p> <p>25 BY MR. NIKAS:</p>



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<p style="text-align: right;">Page 74</p> <p>1 Q And you asked Mr. Peck to deliver the</p> <p>2 painting to Ms. -- how do we say her name?</p> <p>3 A Modestini.</p> <p>4 Q -- Modestini, to her lab so she could</p> <p>5 review it with you?</p> <p>6 A Correct.</p> <p>7 Q And he didn't do that, correct?</p> <p>8 A He didn't. I believe it was Dr. Bonito</p> <p>9 that was the -- who failed to deliver the picture,</p> <p>10 yes.</p> <p>11 Q And you had asked Mr. Peck to deliver it,</p> <p>12 and for whatever reason, whether it's him or</p> <p>13 Ms. Bonito --</p> <p>14 A The painting never showed up, put it that</p> <p>15 way.</p> <p>16 Q Now, are you aware that Mr. Peck had</p> <p>17 agreed in the settlement agreement to deliver the</p> <p>18 painting to Christie's for an evaluation of its</p> <p>19 condition?</p> <p>20 A Having heard that only in this proceeding,</p> <p>21 yes.</p> <p>22 Q And are you aware that Mr. Peck didn't</p> <p>23 deliver the painting on that occasion for an</p> <p>24 evaluation by Christie's?</p> <p>25 A I gather it's a similar situation.</p>	<p style="text-align: right;">Page 76</p> <p>1 then forwarded it to probably the DropBox link</p> <p>2 which I had them to Mr. Greenberg.</p> <p>3 Q And so you have no -- in fact, the</p> <p>4 chronology was you got the documents, gave them to</p> <p>5 Ian Peck, and the Ian Peck e-mailed them to Gary</p> <p>6 Greenberg, correct?</p> <p>7 A I believe. I mean, that part of it is, of</p> <p>8 course, out of my knowledge, but I know that Ian</p> <p>9 had requested a copy of them, and I provided the</p> <p>10 DropBox link.</p> <p>11 Q To Ian Peck?</p> <p>12 A To Ian Peck.</p> <p>13 Q And so when Mr. Greenberg says Ian Peck</p> <p>14 sent him those documents --</p> <p>15 A It sounds like a rational chain of events,</p> <p>16 yes.</p> <p>17 Q Now, in Dr. Hunter's report, I just want</p> <p>18 to be clear here. If you could turn to Tab 17 or</p> <p>19 Exhibit 17, please.</p> <p>20 A Yes.</p> <p>21 Q If you go to Appendix A, information</p> <p>22 provided by claimants on page 13 of 51.</p> <p>23 A Yes.</p> <p>24 Q And if you could look at that appendix,</p> <p>25 please. Just page through it. It has summary of</p>
<p style="text-align: right;">Page 75</p> <p>1 Q Now, when you criticized Dr. Hunter for</p> <p>2 assuming the condition of the work is good and not</p> <p>3 evaluating it in person, are you aware that he was</p> <p>4 unable to do so because the respondents had</p> <p>5 breached their obligation to deliver it?</p> <p>6 MR. PRESS: Objection.</p> <p>7 THE WITNESS: The motivation -- all I know</p> <p>8 is he did not have -- either didn't have access or</p> <p>9 wasn't able for travel reasons, whatever it might</p> <p>10 be, he did not examine the picture.</p> <p>11 ARBITRATOR KRAMER: And you know that</p> <p>12 because of what you heard in this last day and a</p> <p>13 half?</p> <p>14 THE WITNESS: Yes, exactly.</p> <p>15 BY MR. NIKAS:</p> <p>16 Q Now, did you hear Mr. Greenberg testify</p> <p>17 that Ian Peck had sent him the package of</p> <p>18 documents in Appendix A that were part of</p> <p>19 Dr. Hunter's report?</p> <p>20 A Yes.</p> <p>21 Q Do you have any reason to doubt the</p> <p>22 accuracy of that testimony?</p> <p>23 A No. I know that I had the -- that packet</p> <p>24 had been delivered to me by Virginia Bonito and</p> <p>25 that I shared the documents with Ian Peck, and Ian</p>	<p style="text-align: right;">Page 77</p> <p>1 fact sheet, we have the works with remarks, the</p> <p>2 Freedberg letter, picture of another work. Excuse</p> <p>3 me, a picture of the del Sarto, a picture of</p> <p>4 another work, condition of work, yes?</p> <p>5 A Yes.</p> <p>6 Q Are these the documents that --</p> <p>7 A Some of them. In addition, there's a</p> <p>8 sheet from David Franklin Mr. Greenberg mentioned</p> <p>9 that he found on the Internet and added there were</p> <p>10 other -- there was other material from Virginia</p> <p>11 Bonito. Most of it was pretty irrelevant to the</p> <p>12 matter at all hand, so...</p> <p>13 Q The documents here, other than that David</p> <p>14 Franklin --</p> <p>15 A And the redaction, of course, was in the</p> <p>16 material that I had received from Virginia Bonito.</p> <p>17 Q And you provided the documents that we're</p> <p>18 looking at right now to Ian Peck, correct, other</p> <p>19 than the David Franklin letter?</p> <p>20 A I believe so. Although I -- as I</p> <p>21 mentioned, although the content seems to -- I</p> <p>22 don't really recognize the form. I have to go</p> <p>23 through it of the sheet that says "work of art,"</p> <p>24 but I believe that is Virginia Bonito's condition</p> <p>25 statement or whatever.</p>



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<p style="text-align: right;">Page 78</p> <p>1 Q That you sent to Ian Peck, that Ian Peck</p> <p>2 then sent to Gary Greenberg?</p> <p>3 A Yes.</p> <p>4 Q Now, the Freedberg letter that you</p> <p>5 received that ultimately Mr. Peck sent to</p> <p>6 Mr. Greenberg said that the work is in fine and</p> <p>7 stable condition, right?</p> <p>8 A Uh-huh.</p> <p>9 Q And then the -- the Friedberg letter also</p> <p>10 that you received and forwarded to Ian which he</p> <p>11 forwarded to Mr. Greenberg also mentioned that</p> <p>12 Mr. Friedberg saw it in person, correct?</p> <p>13 A Yes.</p> <p>14 Q And that it was a high quality work?</p> <p>15 A Yes.</p> <p>16 Q Now, you offer the opinion in your report</p> <p>17 that the condition is not clear, right?</p> <p>18 A I do.</p> <p>19 Q And so in order for someone to determine,</p> <p>20 in fact, whether Dr. Freedberg's comments about</p> <p>21 his inspection of the painting, the condition</p> <p>22 report comment that it's in good and stable</p> <p>23 condition were inaccurate. You need to actually</p> <p>24 see the work in person, correct?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 80</p> <p>1 should not have been taken as a fact.</p> <p>2 Q Now, you heard Mr. Greenberg testify that</p> <p>3 the condition report that Mr. Peck sent to him had</p> <p>4 the redactions in it, you heard that, right?</p> <p>5 A I did.</p> <p>6 Q You have no reason to doubt that</p> <p>7 Mr. Greenberg was telling the truth?</p> <p>8 A I think he's an honest man.</p> <p>9 MR. NIKAS: Thank you very much, sir. No</p> <p>10 further questions.</p> <p>11 R E D I R E C T - E X A M I N A T I O N</p> <p>12 BY MR. PRESS:</p> <p>13 Q Dr. Simon, as counsel was going through</p> <p>14 your report, your rebuttal report with you, he</p> <p>15 asked if the arbitrator can disregard portions of</p> <p>16 the report.</p> <p>17 Do you remember that testimony, that</p> <p>18 question?</p> <p>19 A Disregard portions of my report?</p> <p>20 Q Yes.</p> <p>21 A I -- the question of the authorship and</p> <p>22 identification of the sitter.</p> <p>23 Q Do you agree he asked you if you --</p> <p>24 A Yes.</p> <p>25 Q Are you agreeing that portions of your</p>
<p style="text-align: right;">Page 79</p> <p>1 Q And then you need to hire someone like</p> <p>2 Diane Modestini?</p> <p>3 A Well, if I were doing the appraisal -- if</p> <p>4 I had done an appraisal, I would have been more</p> <p>5 specific in my appreciation of the condition of</p> <p>6 the painting. I have the -- as a trained art</p> <p>7 historian and observer of an appraiser, I could</p> <p>8 certainly qualify it, you know, specify my</p> <p>9 appreciation of the condition of the painting.</p> <p>10 Q And so when you qualify it, using that</p> <p>11 example, you've got no access to the painting, but</p> <p>12 a condition report that says it's in good</p> <p>13 condition, a letter from a scholar significant as</p> <p>14 Freedberg saying, saw it in person, and it's a</p> <p>15 high quality work, in order to determine whether</p> <p>16 those are accurate statements you'd need to see</p> <p>17 the work in person, right?</p> <p>18 A Well, the fact that the painting is high</p> <p>19 quality doesn't mean that it's in good condition.</p> <p>20 That's one thing, but the other thing is when</p> <p>21 you're dealing with a condition report that was</p> <p>22 authored by the owner of the painting, it really</p> <p>23 would want an independent condition report. This</p> <p>24 is -- the condition statements from Virginia</p> <p>25 Bonito were not to be trusted, in my opinion, and</p>	<p style="text-align: right;">Page 81</p> <p>1 report can be disregarded for purposes of this</p> <p>2 arbitration?</p> <p>3 A I think they're significant, but, I</p> <p>4 mean --</p> <p>5 Q So you're not agreeing that they should be</p> <p>6 disregarded?</p> <p>7 A Well, that has to do with the legal issue</p> <p>8 that -- you know, in the settlement agreement</p> <p>9 which is something that I don't have, you know, an</p> <p>10 intelligent opinion about.</p> <p>11 Q So when you hear that testimony, you were</p> <p>12 saying that the law will decide, but you're not</p> <p>13 yourself saying that portions of your report</p> <p>14 should be disregarded?</p> <p>15 A No. Exactly.</p> <p>16 Q Okay. And do you recall being asked about</p> <p>17 sort of a sequence of events in which the</p> <p>18 materials concerning the condition and the</p> <p>19 attribution of the work that were prepared by</p> <p>20 Virginia Bonito was sort of disseminated; do you</p> <p>21 remember that testimony?</p> <p>22 A You mean about how Mr. Greenberg received</p> <p>23 them?</p> <p>24 Q Correct.</p> <p>25 A Yes.</p>



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<p style="text-align: right;">Page 82</p> <p>1 Q Now, after the time that these materials</p> <p>2 were provided to Mr. Peck, and ultimately</p> <p>3 Mr. Greenberg, in whatever order it occurred, you</p> <p>4 had discussions with Mr. Greenberg concerning the</p> <p>5 viewings you had of the painting, right?</p> <p>6 A I think the materials --</p> <p>7 MR. NIKAS: Objection; leading.</p> <p>8 ARBITRATOR KRAMER: Let me hear the</p> <p>9 question again.</p> <p>10 MR. PRESS: I'm asking him if after the</p> <p>11 time that the condition report materials, other</p> <p>12 materials, were provided, if he had discussions</p> <p>13 with Mr. Greenberg.</p> <p>14 ARBITRATOR KRAMER: That's okay. Go</p> <p>15 ahead.</p> <p>16 THE WITNESS: As I recall, I spoke with</p> <p>17 Mr. Greenberg and Mr. Peck within pretty</p> <p>18 contemporaneously with seeing the painting, and I</p> <p>19 think the documents were sent subsequently, among</p> <p>20 other things.</p> <p>21 At the time that I saw the painting in</p> <p>22 October or November of 2019, the owner of the</p> <p>23 painting, the location of the painting, were kind</p> <p>24 of privileged to Mr. Peck, you know, had not</p> <p>25 wanted that to be disseminated to, let's just call</p>	<p style="text-align: right;">Page 84</p> <p>1 BY MR. PRESS:</p> <p>2 Q Mr. Peck, you are the director of the</p> <p>3 respondents in this case, right?</p> <p>4 A Yes.</p> <p>5 Q And you testified yesterday in the case of</p> <p>6 the claimant, correct, you provided some prior</p> <p>7 testimony?</p> <p>8 A Yes.</p> <p>9 Q Okay. I only have a few questions for</p> <p>10 you.</p> <p>11 The -- we just heard some questions and</p> <p>12 some testimony about materials that were provided</p> <p>13 by Virginia Bonito concerning the painting.</p> <p>14 Do you recall that testimony?</p> <p>15 A Yes.</p> <p>16 Q Okay. And did you send over materials by</p> <p>17 Ms. Bonito to Robert Simon and/or Gary Greenberg?</p> <p>18 A My recollection was that we sent some</p> <p>19 documents via e-mail to Gary, and I thought that</p> <p>20 Robert had sent some as well.</p> <p>21 Q Okay. And did you inform Mr. Greenberg</p> <p>22 the source of the documents that you provided?</p> <p>23 A I told him it was coming from the owner.</p> <p>24 Q And did you represent anything as to the</p> <p>25 accuracy or truthfulness of the materials provided</p>
<p style="text-align: right;">Page 83</p> <p>1 it the owner, and it was after that, it may have</p> <p>2 been actually in the new year, like in February of</p> <p>3 2020, that the dossier of documents was shared by</p> <p>4 me. I mean, I think -- I'm pretty sure that Ian</p> <p>5 had it before, but he just couldn't locate it, so</p> <p>6 I sent my copy back to him.</p> <p>7 BY MR. PRESS:</p> <p>8 Q But you had --</p> <p>9 A I don't know that I spoke with</p> <p>10 Mr. Greenberg after that.</p> <p>11 BY MR. PRESS:</p> <p>12 Q And when you spoke with Mr. Greenberg, you</p> <p>13 communicated your concerns about the condition of</p> <p>14 the painting?</p> <p>15 A Yes.</p> <p>16 MR. PRESS: Okay. No further questions.</p> <p>17 MR. NIKAS: Nothing further for me.</p> <p>18 ARBITRATOR KRAMER: Thank you very much.</p> <p>19 Let's start with Mr. Peck.</p> <p>20 MR. PRESS: I have a few questions for</p> <p>21 Mr. Peck. He had to step out.</p> <p>22 DIRECT EXAMINATION</p> <p>23 OF</p> <p>24 IAN PECK</p> <p>25 (Resumed.)</p>	<p style="text-align: right;">Page 85</p> <p>1 by the owner?</p> <p>2 A Not specifically, no.</p> <p>3 Q Okay. And I want you to turn to Tab 1 in</p> <p>4 the binder.</p> <p>5 Now, I believe that when you were being</p> <p>6 questioned before you were asked about section 6</p> <p>7 in this document. This is the settlement</p> <p>8 agreement, correct?</p> <p>9 A Yes.</p> <p>10 Q Okay. And in this document, just</p> <p>11 directing your attention to page 5.</p> <p>12 A Yes.</p> <p>13 Q Now, you were shown section 6E of this</p> <p>14 document. Do you see that? It says, this work is</p> <p>15 authentic?</p> <p>16 A Yes.</p> <p>17 Q Did you make any other representation</p> <p>18 concerning -- well, strike that.</p> <p>19 Did you make a representation anywhere in</p> <p>20 this document concerning the condition of the</p> <p>21 work?</p> <p>22 A No.</p> <p>23 Q And directing your attention to page 8 of</p> <p>24 this document, if you turn there, directing you to</p> <p>25 Section 16. Now, this says "entire agreement"; do</p>



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<p style="text-align: right;">Page 86</p> <p>1 you see that section?</p> <p>2 A Yes.</p> <p>3 Q Okay. And you understand this to be an</p> <p>4 integration clause?</p> <p>5 A Yes.</p> <p>6 Q Did you rely on this provision in</p> <p>7 connection with entering into this agreement with</p> <p>8 Mr. Greenberg and the claimants?</p> <p>9 A Yes.</p> <p>10 Q Now, there was some testimony from</p> <p>11 yesterday about -- well, first I want to ask you</p> <p>12 are you aware that the painting sold in Sotheby's</p> <p>13 Old Masters auction in January 2022?</p> <p>14 A Yes.</p> <p>15 Q And did you -- did you watch that auction</p> <p>16 in some form?</p> <p>17 A Yes.</p> <p>18 Q Okay. And did you see it get bid on?</p> <p>19 A Yes.</p> <p>20 ARBITRATOR KRAMER: Did you watch it --</p> <p>21 was it in person or --</p> <p>22 THE WITNESS: I was watching it on video,</p> <p>23 live video.</p> <p>24 ARBITRATOR KRAMER: A live stream video?</p> <p>25 THE WITNESS: Yes.</p>	<p style="text-align: right;">Page 88</p> <p>1 had extended to her.</p> <p>2 THE WITNESS: That was part of the</p> <p>3 dispute, yes.</p> <p>4 BY MR. PRESS:</p> <p>5 Q Okay. And were there negotiations between</p> <p>6 you and Ms. Bonito concerning the reimbursement of</p> <p>7 the amounts that had been extended to her or</p> <p>8 advanced by you in some other way?</p> <p>9 MR. NIKAS: Objection. It's not relevant.</p> <p>10 ARBITRATOR KRAMER: Overruled.</p> <p>11 THE WITNESS: In the context of Sotheby's,</p> <p>12 yes.</p> <p>13 BY MR. PRESS:</p> <p>14 Q All right. And we saw a complaint that</p> <p>15 you filed in court, you know, a few days before</p> <p>16 the auction; do you recall that?</p> <p>17 A Yes.</p> <p>18 Q And was that matter resolved?</p> <p>19 A Yes.</p> <p>20 Q Okay. And in the caption in that</p> <p>21 matter -- let's just look at it really quick here.</p> <p>22 It's seven, tab seven.</p> <p>23 Okay. Let me know when you get there.</p> <p>24 A Okay.</p> <p>25 Q Okay. Look at the caption. Doe the</p>
<p style="text-align: right;">Page 87</p> <p>1 ARBITRATOR KRAMER: Is that typically done</p> <p>2 by Sotheby's?</p> <p>3 THE WITNESS: A lot of people, especially</p> <p>4 with COVID, were doing that. Evaluating in the</p> <p>5 room, you know, with a bunch of people was not</p> <p>6 good.</p> <p>7 BY MR. PRESS:</p> <p>8 Q Okay. And did you see what the hammer</p> <p>9 price was for the work?</p> <p>10 A Yes.</p> <p>11 Q And what was that?</p> <p>12 A 1.8 million.</p> <p>13 Q Okay. And there's been some testimony</p> <p>14 about litigation concerning the painting, you</p> <p>15 know, prior to that time.</p> <p>16 Do you recall that testimony?</p> <p>17 A Yes.</p> <p>18 Q Okay. And did Virginia Bonito -- strike</p> <p>19 that.</p> <p>20 Was there a dispute between you and</p> <p>21 Virginia Bonito concerning the reimbursement</p> <p>22 amounts that you extended to her?</p> <p>23 ARBITRATOR KRAMER: I didn't hear the</p> <p>24 question.</p> <p>25 MR. PRESS: Reimbursement amounts that you</p>	<p style="text-align: right;">Page 89</p> <p>1 caption in this lawsuit in any way mention the</p> <p>2 painting?</p> <p>3 A No.</p> <p>4 ARBITRATOR KRAMER: Does it mention any</p> <p>5 what?</p> <p>6 MR. PRESS: The painting.</p> <p>7 ARBITRATOR KRAMER: Okay.</p> <p>8 BY MR. PRESS:</p> <p>9 Q Okay. This has Empire Chesapeake Holdings</p> <p>10 and Chelsea Art Holdings as plaintiffs?</p> <p>11 A Yes.</p> <p>12 Q And Virginia Anne Bonito and Bottom Line</p> <p>13 Exchange Company as defendants, right?</p> <p>14 A Yeah.</p> <p>15 Q Okay. And to your knowledge, is anyone</p> <p>16 else other than the parties to this case and</p> <p>17 Sotheby's aware of this litigation proceeding?</p> <p>18 A No, not to my knowledge.</p> <p>19 Q Okay. And it was resolved prior to the</p> <p>20 auction, correct?</p> <p>21 A Yes.</p> <p>22 Q Okay. And in connection with the auction,</p> <p>23 the auction by Sotheby's, does Sotheby's warrant</p> <p>24 anything to a purchaser?</p> <p>25 A Yes.</p>



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<p style="text-align: right;">Page 90</p> <p>1 Q And what is that?</p> <p>2 A Sotheby's guarantees authenticity, title,</p> <p>3 and that's it, authenticity and title.</p> <p>4 Q And do you believe the litigation that was</p> <p>5 filed just a few days before the auction had any</p> <p>6 impact on the auction results?</p> <p>7 MR. NIKAS: Objection; no foundation.</p> <p>8 THE WITNESS: No, I do not.</p> <p>9 MR. PRESS: He can have an opinion about</p> <p>10 that, and take it for what it is.</p> <p>11 ARBITRATOR KRAMER: He already answered.</p> <p>12 So I won't strike his answer.</p> <p>13 MR. PRESS: All right.</p> <p>14 BY MR. PRESS:</p> <p>15 Q Do you think that the auction established</p> <p>16 the fair market value of the painting?</p> <p>17 A I think public auction is the most</p> <p>18 accurate reflection of market value.</p> <p>19 Q And is there any reason in your mind to</p> <p>20 believe that the painting could have sold for more</p> <p>21 at a prior date such as in April 2021?</p> <p>22 A No. If anything, I think it would have</p> <p>23 sold for much less.</p> <p>24 Q Why do you think that?</p> <p>25 A Well, the January sale -- auction at</p>	<p style="text-align: right;">Page 92</p> <p>1 CROSS - EXAMINATION</p> <p>2 BY MR. NIKAS:</p> <p>3 Q You just testified that the action you</p> <p>4 filed against Sotheby's was resolved before the</p> <p>5 sale; do you recall that?</p> <p>6 MR. PRESS: I have to object. He said</p> <p>7 against Sotheby's. You have to look at the</p> <p>8 caption, please.</p> <p>9 THE WITNESS: We didn't file an action</p> <p>10 again Sotheby's.</p> <p>11 BY MR. NIKAS:</p> <p>12 Q You filed a lawsuit against Virginia Anne</p> <p>13 Bonito and the Bottom Line Exchange regarding a</p> <p>14 work that Sotheby's was selling, correct?</p> <p>15 A We filed against those two parties as it</p> <p>16 related to a painting that was being consigned to</p> <p>17 Sotheby's for sale.</p> <p>18 Q And you sent a letter to Sotheby's</p> <p>19 objecting -- we went over this -- objecting to</p> <p>20 Sotheby's selling the work, correct?</p> <p>21 A We -- the purpose of the letter was to</p> <p>22 notify them that we had an interest, yes.</p> <p>23 Q And you sent a letter objecting to the</p> <p>24 sale, correct?</p> <p>25 A Well, objecting to the sale without our</p>
<p style="text-align: right;">Page 91</p> <p>1 Sotheby's is considered the main and most</p> <p>2 important auction of the year for Old Masters and</p> <p>3 have the best property in it. Sotheby's has the</p> <p>4 best marketing machine by far, and so I do think</p> <p>5 it would have done better in Sotheby's sale than</p> <p>6 rushed into an April sale -- a minor sale at</p> <p>7 Christie's.</p> <p>8 Q Okay. And you've been in the art business</p> <p>9 for many decades; is that fair?</p> <p>10 A Thirty years.</p> <p>11 Q And have you presented appraisals to the</p> <p>12 IRS from time to time?</p> <p>13 A I have worked as part of a team with</p> <p>14 appraisers with the IRS for valuation purposes.</p> <p>15 Q And would the IRS accept an appraisal if</p> <p>16 it didn't comply with USPAP rules in your</p> <p>17 experience?</p> <p>18 A No, they would disregard it.</p> <p>19 MR. PRESS: I have no further questions.</p> <p>20 Thank you.</p> <p>21 MR. NIKAS: I have a few questions, sir.</p> <p>22 ARBITRATOR KRAMER: Can I have the last</p> <p>23 question and answer, please.</p> <p>24 (Whereupon, the selected portion of the</p> <p>25 transcript was read back.)</p>	<p style="text-align: right;">Page 93</p> <p>1 rights being protected, yes.</p> <p>2 Q And the complaint that you filed related</p> <p>3 to the works Sotheby's was offering for sale was</p> <p>4 filed on January 24, 2022, correct?</p> <p>5 A I don't recall the exact date, but it was</p> <p>6 late January.</p> <p>7 Q And the sale was scheduled for three days</p> <p>8 later, January 27, 2022, right?</p> <p>9 A It was very close to the sale, yes.</p> <p>10 Q In fact, the lawsuit that you filed</p> <p>11 against Bonito and Bottom Line Exchange wasn't</p> <p>12 dismissed until March 16th of 2022; isn't that</p> <p>13 right?</p> <p>14 A That is correct.</p> <p>15 Q And was the stipulation signed on</p> <p>16 March 1st, 2022, correct?</p> <p>17 A I don't recall the stipulation.</p> <p>18 Q But the lawsuit was dismissed in the</p> <p>19 middle of March, a month and a half after the</p> <p>20 sale, correct?</p> <p>21 A Yes.</p> <p>22 Q And on the docket of that case, you're not</p> <p>23 aware of any public notices that the lawsuit had</p> <p>24 been resolved in a matter of days, correct?</p> <p>25 A No.</p>



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1 Q And the only public notice was that it  
 2 resolved a month and a half later, right?  
 3 A I assume that's what it says.  
 4 Q Thank you.  
 5 Now, you heard Dr. Simon's testimony that  
 6 you had sent documents to him or Bonito did, he  
 7 sent them to you, and then you sent them to Gary  
 8 Greenberg, correct?  
 9 MR. PRESS: The question is did you hear  
 10 the testimony or are you asking him is that what  
 11 happened?  
 12 MR. NIKAS: If you have an objection, make  
 13 it. I'm not sure --  
 14 MR. PRESS: Object to form.  
 15 ARBITRATOR KRAMER: Rephrase the question.  
 16 MR. NIKAS: Sure.  
 17 BY MR. PRESS:  
 18 Q Did you hear Dr. Simon's testimony that he  
 19 received documents from Bonito, he then sent those  
 20 documents to you, and then you sent those  
 21 documents to Gary Greenberg?  
 22 A Yes.  
 23 Q Is that accurate?  
 24 A My recollection is that I sent certain  
 25 documents from that same file that Dr. Simon

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1 provided, and that he certain documents directly  
 2 to Greenberg.  
 3 Q You have no actual knowledge of what  
 4 Dr. Simon actually sent to Mr. Greenberg, correct?  
 5 A Not specifically.  
 6 Q You only know what you sent to  
 7 Mr. Greenberg, right?  
 8 A Generally, yes.  
 9 Q And you sent Mr. Greenberg the condition  
 10 report, correct?  
 11 A I don't recall the specific things we were  
 12 sending. We were sending the entire file that was  
 13 being provided to us from Dr. Bonito to give him  
 14 everything that we were looking at -- that we were  
 15 looking at so that he had everything that we had.  
 16 Q Maybe I can refresh your recollection.  
 17 I'm going to show you an e-mail that you sent to  
 18 Mr. Greenberg on February 16, 2020, attaching a  
 19 redacted condition report. If you can tell me  
 20 whether that --  
 21 MR. PRESS: I'm going to object. Is this  
 22 an exhibit in the case?  
 23 MR. NIKAS: I'm refreshing his  
 24 recollection.  
 25 ARBITRATOR KRAMER: It's

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1 cross-examination.  
 2 MR. PRESS: Okay.  
 3 BY MR. NIKAS:  
 4 Q If you can take a look at that, please.  
 5 ARBITRATOR KRAMER: Did you supply a copy  
 6 to Mr. Press?  
 7 MR. PRESS: I haven't received this in  
 8 discovery. I never received this in discovery.  
 9 MR. NIKAS: It was a request for all  
 10 documents related to the work that Mr. Press made.  
 11 We objected to the breadth of that request  
 12 containing privilege, and otherwise we said we  
 13 would agree to confer in a good faith, and there  
 14 are the requests. Mr. Press, he never followed  
 15 up, never moved to compel, and this is a document  
 16 his clients sent, so there's clearly no prejudice,  
 17 and we requested it from him as well, and we never  
 18 received it.  
 19 ARBITRATOR KRAMER: Okay.  
 20 BY MR. NIKAS:  
 21 Q Does your refresh your recollection that  
 22 you sent Mr. Greenberg the condition report in  
 23 redacted form?  
 24 A It appears that I did, yes.  
 25 Q And you also sent Mr. Greenberg the

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1 Freedberg letter, correct?  
 2 A Yes.  
 3 Q And you also sent him the images of the  
 4 work, correct?  
 5 A There were two main images of the work  
 6 that we sent, yes.  
 7 Q And when you e-mailed Mr. Greenberg the  
 8 image of the work, you said that that's the  
 9 painting, we had no restoration, repairs, or  
 10 vanish, so what you see, is all original, correct?  
 11 A That's what I was told.  
 12 Q And that's what you told Mr. Greenberg,  
 13 correct?  
 14 A I don't recall specifically telling him  
 15 that.  
 16 Q Let me see if I can refresh your  
 17 recollection.  
 18 Does that refresh your recollection that  
 19 you told Mr. Greenberg that the painting in this  
 20 image was the painting with no restoration,  
 21 repairs, or vanish, so what you see is all  
 22 original?  
 23 A That was my opinion based on what I was  
 24 being told.  
 25 Q Okay. Now, you've heard Dr. -- let me



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<p style="text-align: right;">Page 98</p> <p>1 just -- with respect to the Friedberg letter, you</p> <p>2 sent that to Mr. Greenberg directly on</p> <p>3 February 5th, 2020; do you recall that?</p> <p>4 A I don't specific recall.</p> <p>5 Q Let me see if I can refresh your</p> <p>6 recollection.</p> <p>7 MR. PRESS: I'm going to object to all</p> <p>8 these documents because they're all within the</p> <p>9 scope of my request, and they said I'm not giving</p> <p>10 you anything, and it's all directly relevant to</p> <p>11 this proceeding, and I don't think we should --</p> <p>12 ARBITRATOR KRAMER: Overruled.</p> <p>13 BY MR. NIKAS:</p> <p>14 Q Do you recall sending that e-mail, sir?</p> <p>15 A Not specifically, but I have no doubt that</p> <p>16 I would have.</p> <p>17 Q Now, you heard Dr. Hunter testify that the</p> <p>18 only additional information he'd need to make a</p> <p>19 definitive conclusion about the condition of the</p> <p>20 paint is to actually see it in person?</p> <p>21 MR. PRESS: I'm going to object to this as</p> <p>22 it's beyond the scope of the direct examination.</p> <p>23 MR. NIKAS: He gave answers about the</p> <p>24 condition of the work.</p> <p>25 MR. PRESS: It was only about his</p>	<p style="text-align: right;">Page 100</p> <p>1 that.</p> <p>2 If he's going to preclude things that I</p> <p>3 would like to have my witness discuss, then I</p> <p>4 think he has to respect the rule on staying within</p> <p>5 the scope of the examination.</p> <p>6 MR. NIKAS: We went over the contractual</p> <p>7 provisions. He talked directly about the</p> <p>8 conditions. I'm asking him questions directly</p> <p>9 related to the conditions as well as the expert</p> <p>10 testimony that his own expert gave after my</p> <p>11 case-in-chief.</p> <p>12 ARBITRATOR KRAMER: Overruled.</p> <p>13 THE WITNESS: Sorry. Can you repeat the</p> <p>14 question?</p> <p>15 BY MR. NIKAS:</p> <p>16 Q Sure. In the contract you entered into</p> <p>17 with Mr. Greenberg and the respondents, you</p> <p>18 promised that you would deliver the work to</p> <p>19 Christie's for an inspection of the condition and</p> <p>20 an estimate, correct?</p> <p>21 A That was the goal, yes.</p> <p>22 Q And you never delivered the work to</p> <p>23 Christie's for that inspection, correct?</p> <p>24 A We were unable to.</p> <p>25 Q You never delivered the work to Christie's</p>
<p style="text-align: right;">Page 99</p> <p>1 representations.</p> <p>2 ARBITRATOR KRAMER: I'll allow that.</p> <p>3 Overruled.</p> <p>4 THE WITNESS: I'm sorry.</p> <p>5 BY MR. NIKAS:</p> <p>6 Q You heard Dr. Hunter say the additional</p> <p>7 information he'd need to determine the condition</p> <p>8 definitively was to be able to see it in person,</p> <p>9 correct?</p> <p>10 A I don't recall that specifically.</p> <p>11 Q Okay. You heard Dr. Simon just say that</p> <p>12 in order to determine definitively the condition</p> <p>13 of the painting he would need to have it delivered</p> <p>14 to Diane Modestini and see it in person in her</p> <p>15 lab, correct?</p> <p>16 A Yes.</p> <p>17 Q And in the contract with Mr. Greenberg,</p> <p>18 you promised to send the work to Christie's for an</p> <p>19 inspection of its condition and an estimate,</p> <p>20 correct?</p> <p>21 MR. PRESS: Now I'm going to objet. Now,</p> <p>22 this is definitely beyond the scope. I mean, he</p> <p>23 gave very limited testimony. He could have asked</p> <p>24 this yesterday when he called him direct. He</p> <p>25 rested, and I really think he has to be stuck with</p>	<p style="text-align: right;">Page 101</p> <p>1 for that inspection, correct?</p> <p>2 ARBITRATOR KRAMER: We know that, yes.</p> <p>3 MR. PRESS: This has all been asked and</p> <p>4 answered.</p> <p>5 BY MR. NIKAS:</p> <p>6 Q And your aware the arbitrator found you</p> <p>7 breached the contract --</p> <p>8 MR. PRESS: We've covered this.</p> <p>9 BY MR. NIKAS:</p> <p>10 Q -- for failing to deliver, correct?</p> <p>11 A I understand that's the finding. I don't</p> <p>12 agree with it.</p> <p>13 Q And it is your testimony with respect to</p> <p>14 the condition that you should be able to take</p> <p>15 advantage of your failure to deliver it by</p> <p>16 suppressing the value of the work in this case?</p> <p>17 MR. PRESS: Objection.</p> <p>18 ARBITRATOR KRAMER: Sustained.</p> <p>19 MR. NIKAS: I have no further questions.</p> <p>20 MR. PRESS: I have no further questions</p> <p>21 for Mr. Peck.</p> <p>22 ARBITRATOR KRAMER: Let me ask a question.</p> <p>23 In 2019, when Dr. Simon went to look at</p> <p>24 the painting at Dr. Bonito's house, did he report</p> <p>25 to you on his views of the condition?</p>



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<p style="text-align: right;">Page 102</p> <p>1 THE WITNESS: Yes. He said that he had</p> <p>2 questions and that he wanted to have this woman</p> <p>3 follow up and do these exams. Unfortunately, we</p> <p>4 couldn't get the owner to agree to that, but, you</p> <p>5 know, he certainly saw it. Robert is being</p> <p>6 modest. He's an expert. He's not a restorer, but</p> <p>7 he's very expert in looking at Old Master</p> <p>8 paintings.</p> <p>9 ARBITRATOR KRAMER: If there were</p> <p>10 questions about the condition in 2019, why did you</p> <p>11 send, in February of 2020, send a letter to</p> <p>12 Mr. Greenberg -- forward the letter to</p> <p>13 Mr. Greenberg which says the condition, the</p> <p>14 painting is in a fine and stable condition?</p> <p>15 THE WITNESS: We were just forwarding what</p> <p>16 we had as a condition report for the painting,</p> <p>17 which was being provided by the owner. Robert</p> <p>18 Simon's job was to offer his own independent view.</p> <p>19 ARBITRATOR KRAMER: Okay. Thank you.</p> <p>20 MR. PRESS: I have no further questions.</p> <p>21 ARBITRATOR KRAMER: Very well. Thank you</p> <p>22 very much, Mr. Peck.</p> <p>23 Any further witnesses?</p> <p>24 MR. NIKAS: Not from the claimants, sir.</p> <p>25 MR. PRESS: And none from this side.</p>	<p style="text-align: right;">Page 104</p> <p>1 rule explanation of what happened, and I don't</p> <p>2 believe that story we heard is credible. I think,</p> <p>3 that it's easily verifiable from documents within</p> <p>4 Winston Art Group and from the testimony of those</p> <p>5 witnesses. I think it's material to the</p> <p>6 admissibility of Dr. Hunter's expert report.</p> <p>7 So I'm just stating that I want to state</p> <p>8 that on the record. I understand your ruling.</p> <p>9 I'm objecting to the ruling, and then we can move</p> <p>10 on. We can talk about it.</p> <p>11 ARBITRATOR KRAMER: When did you obtain</p> <p>12 the appraisal report dated October 4, 2019, and</p> <p>13 from whom?</p> <p>14 MR. PRESS: We -- so my client learned</p> <p>15 about it, and so we made discovery requests asking</p> <p>16 for that report and for material concerning that</p> <p>17 report. And I recall that we had a teleconference</p> <p>18 in which you directed the claimants provide that</p> <p>19 report. I then had discovery requests, further</p> <p>20 requests, for documents concerning the origin of</p> <p>21 the two reports. And also, I specifically</p> <p>22 requested deposition's of Geza von Habsburg and</p> <p>23 Elizabeth von Habsburg; you denied those requests.</p> <p>24 I've been renewing them. I understand your</p> <p>25 decision. I've been renewing them because I think</p>
<p style="text-align: right;">Page 103</p> <p>1 ARBITRATOR KRAMER: Okay. Why don't we</p> <p>2 excuse Dr. Hunter and Mr. Simon. I want to talk</p> <p>3 about briefing.</p> <p>4 MR. PRESS: I have one further statement</p> <p>5 which is that I need to renew my request that we</p> <p>6 keep the hearing open so that we can get the</p> <p>7 testimony of Geza von Habsburg and Elizabeth von</p> <p>8 Habsburg.</p> <p>9 ARBITRATOR KRAMER: Well, I've written</p> <p>10 about it, and I'll write about it again in my next</p> <p>11 decision. The basic reason is I thought that it</p> <p>12 would unduly extend the hearings, and you have</p> <p>13 been given sufficient information to cross-examine</p> <p>14 on the issues raised by the failure of the -- of</p> <p>15 Dr. Hunter's report to acknowledge that the</p> <p>16 Winston Art Group had done an appraisal of the</p> <p>17 same work in 2019. I'll write further about that</p> <p>18 in my final decision.</p> <p>19 MR. PRESS: I would just like to make one</p> <p>20 comment on that. I understand your ruling, but</p> <p>21 the comment I'd like to make is that because we</p> <p>22 have not had discovery and haven't been able to</p> <p>23 speak to either Geza or Elizabeth von Habsburg,</p> <p>24 because of that, we -- the respondents have been</p> <p>25 forced to accept what I believe to be a pretext</p>	<p style="text-align: right;">Page 105</p> <p>1 at this point, I think perhaps you can see that</p> <p>2 these are -- this is relevant information that's</p> <p>3 being sought, and so I'm going to continue</p> <p>4 renewing it and I'll continue objecting, but</p> <p>5 there's a record of that, that we have been asking</p> <p>6 for that since we found out about the report.</p> <p>7 ARBITRATOR KRAMER: Can you tell me bout</p> <p>8 the chronological, please?</p> <p>9 MR. NIKAS: Sure. So Mr. Hunter had no</p> <p>10 idea the report had been prepared. He didn't have</p> <p>11 it in his files.</p> <p>12 ARBITRATOR KRAMER: I have heard his</p> <p>13 testimony.</p> <p>14 MR. NIKAS: And nor was Winston aware of</p> <p>15 it. It didn't come up in the conflict check, so</p> <p>16 we didn't know about it when he produced his</p> <p>17 report.</p> <p>18 When Mr. Press learned about it, he in</p> <p>19 essence took the position that this is not</p> <p>20 Dr. Hunter's report, it's not our expert in the</p> <p>21 case, he's an independent consultant, and so it's</p> <p>22 relevant. You said produce the report, so we went</p> <p>23 to the files, which was at Winston, found the</p> <p>24 report, found the \$30 million-report in the same</p> <p>25 file and produced those reports to Mr. Press. He</p>



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<p style="text-align: right;">Page 106</p> <p>1 did not make any efforts to depose Dr. Hunter</p> <p>2 about those issues. We said Dr. Hunter can</p> <p>3 testify about those issues. We prefer discovery</p> <p>4 after that and we can discuss it. He failed to</p> <p>5 take any depositions in the case at all, follow up</p> <p>6 on any depositions at all. And then after expert</p> <p>7 discovery was done, after summary judgment was</p> <p>8 already in, he started pressing for discovery</p> <p>9 directly of Winston around that time. We said</p> <p>10 that's entirely irrelevant. You've got the</p> <p>11 testimony of our expert, Dr. Hunter, and you said</p> <p>12 you'd hear from Dr. Hunter because he's the one</p> <p>13 prepared the report. It's his credibility on the</p> <p>14 line, and Mr. Press was perfectly free to</p> <p>15 cross-examine him on the issues, and then,</p> <p>16 ultimately, if Mr. Hunter is not prepared to</p> <p>17 testify about those matters, then you'd make a</p> <p>18 discussion as to whether someone else was. He</p> <p>19 came, he testified about those matters, he</p> <p>20 testified truthfully that he wasn't aware of it,</p> <p>21 that the conflict check happened in exactly the</p> <p>22 way it did, and that we didn't know about it.</p> <p>23 Mr. Greenberg said that he didn't know about that</p> <p>24 report, and nor did I until after Mr. Press raised</p> <p>25 it.</p>	<p style="text-align: right;">Page 108</p> <p>1 the whole company. I just think that it doesn't</p> <p>2 seem plausible to me that they made this mistake,</p> <p>3 and while they presented it that way, you know,</p> <p>4 the normal process in litigation is not to just</p> <p>5 take their word for it, but to get documents. I</p> <p>6 did seek the documents. I didn't take the</p> <p>7 deposition of Dr. Hunter, that's true, but I did</p> <p>8 seek to a subpoena and documents related to</p> <p>9 exactly this issue. You denied the request, but</p> <p>10 I'm renewing it now. I think the hearing could</p> <p>11 remain open. We could obtain the discovery</p> <p>12 quickly, and then if there's more testimony, we</p> <p>13 could cover it.</p> <p>14 ARBITRATOR KRAMER: Well, what Mr. Press</p> <p>15 is suggesting is that there -- that Dr. Hunter</p> <p>16 gave untruthful testimony and that could be shown</p> <p>17 by examining one or both of the Habsburgs.</p> <p>18 Are you content to leave the record the</p> <p>19 way it is?</p> <p>20 MR. NIKAS: I'm content to leave it</p> <p>21 exactly as it is. He's had multiple opportunities</p> <p>22 to depose -- he had a month to depose Dr. Hunter</p> <p>23 to follow up on any evidence that he thought in</p> <p>24 that testimony demonstrated he was not credible;</p> <p>25 he failed to do that. There's absolutely zero</p>
<p style="text-align: right;">Page 107</p> <p>1 With all of that evidence, there's</p> <p>2 absolutely no reason to bring in other people who</p> <p>3 were not hired, did not provide this report, and</p> <p>4 are not going to be additive to what Dr. Hunter</p> <p>5 already testified about.</p> <p>6 You denied the request multiple times, and</p> <p>7 Mr. Press could have taken Dr. Hunter's deposition</p> <p>8 and heard that testimony and said, well, I think I</p> <p>9 need more information, made an application to you,</p> <p>10 but he didn't.</p> <p>11 MR. PRESS: And that chronology leaves out</p> <p>12 the fact that I issued document requests and</p> <p>13 discovery requests, I had a subpoena to Winston</p> <p>14 Art Group where I asked for an entire range of</p> <p>15 documents that would allow me to explore these</p> <p>16 issues, and I got no objection that, you know,</p> <p>17 wholesale objection not providing documents.</p> <p>18 I did raise this to you and you sustained</p> <p>19 those objections, but I think at that time it may</p> <p>20 not have been clear to you the significance of it,</p> <p>21 and I do think that -- we heard some testimony</p> <p>22 from Dr. Hunter yesterday that he -- that this</p> <p>23 assignment came through Elizabeth von Habsburg in</p> <p>24 the New York office, okay, and then she farmed it</p> <p>25 out to Dr. Hunter. She's the managing director of</p>	<p style="text-align: right;">Page 109</p> <p>1 evidence presented in Dr. Hunter's</p> <p>2 cross-examination that he was not telling the</p> <p>3 truth. His testimony was credible, we ran a</p> <p>4 conflict check with Winston. They said they had</p> <p>5 no record of any of the parties. Mr. Greenberg</p> <p>6 testified that we have absolutely no idea.</p> <p>7 This goes to credibility, and if you found</p> <p>8 his testimony to be credible, and it is, then</p> <p>9 fine. If you found his testimony not to be</p> <p>10 credible, you'll make that judgment. You have</p> <p>11 that \$1.5 million report, we have his explanation</p> <p>12 for it, there's absolutely no prejudice</p> <p>13 whatsoever, they were able to cross-examine him on</p> <p>14 the substance of the report. This is an effort to</p> <p>15 keep the hearing open and delay when the record</p> <p>16 speaks for itself in this claim.</p> <p>17 MR. PRESS: Mr. Kramer, if I may respond</p> <p>18 to that very quickly. I know you don't want to</p> <p>19 keep the going over this, but you may recall the</p> <p>20 testimony of Dr. Hunter was that that he</p> <p>21 acknowledges providing substantial assistance in</p> <p>22 Geza von Habsburg's 2019 appraisal. Because of a</p> <p>23 single phone call, and in that single phone call</p> <p>24 he said that there was a very serious issue with</p> <p>25 title and that they should stay away from Virginia</p>



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<p style="text-align: right;">Page 110</p> <p>1 Bonito, but if you look at that expert report, it  2 doesn't say anything like that. It doesn't  3 mention a problem with title. In fact, it assumes  4 the title. It doesn't say anything like that.  5 So if we're being told that that was --  6 that it was just a single phone call, he doesn't  7 remember it at all, and it was about that, the  8 report that was issued in 2019, doesn't reflect  9 anything like that. It seems implausible. The  10 work file that Winston was required to keep, as a  11 matter of appraisal rules, would indicate the  12 actual work that Dr. Hunter did on that and it  13 could be used to impeach him.  14 It's very easy. They have to keep a work  15 file. They would give us the work file for both  16 of these appraisals, I think there could be some  17 e-mails, and then, sir, you can take it from  18 there.  19 MR. NIKAS: With respect to the evidence,  20 Dr. Hunter searched his entire work file, searched  21 his e-mails. There's not a single document, and  22 I'll put that on the ye record in terms of the  23 document collection and search we did. Not a  24 single document in Dr. Hunter's files related to  25 valuation, research, or anything else. No</p>	<p style="text-align: right;">Page 112</p> <p>1 work file may well reflect the work that  2 Dr. Hunter did.  3 Now, what I hear counsel saying is that he  4 checked Dr. Hunter's file. Now, of course, it's  5 just his say so, but I don't believe this has been  6 run down fully, and I think that the outcome of  7 this could be significant.  8 ARBITRATOR KRAMER: Okay. I will maintain  9 my ruling. I think in litigations, and in  10 arbitrations as well, lawyers make choices along  11 the way about -- deadlines are established in  12 order to make choices along the way of what to  13 pursue and what not to pursue. At the time  14 discovery had ended, according to our schedule,  15 you had not taken any depositions, and so I would  16 maintain my ruling that I will deny the request to  17 get documents or have testimony from either one of  18 the von Habsburgs, okay.  19 MR. NIKAS: Thank you, sir.  20 ARBITRATOR KRAMER: But if we can excuse  21 Dr. Hunter, I would like to talk about the  22 briefing.  23 When did you submit the briefs to me?  24 MR. PRESS: We will get the transcript,  25 and then we're going to need a certain amount of</p>
<p style="text-align: right;">Page 111</p> <p>1 e-mails, nothing, zero.  2 ARBITRATOR KRAMER: Related to 2019 --  3 MR. NIKAS: Related to the 2019 report.  4 Sir, his testimony is that he had one, maybe two,  5 phone calls and gave the information he gave, it's  6 corroborated by the failure -- the absence of any  7 documents whatsoever related to this.  8 ARBITRATOR KRAMER: Okay.  9 MR. NIKAS: We did that research. So to  10 the extent he wants documents as to what  11 Dr. Hunter had in his files, what he relied upon,  12 what he considered, which is what's relevant when  13 you're talking about the opinions that an expert  14 gives, he has literally nothing related to that  15 2019 report in his files.  16 MR. PRESS: You're speaking of his files.  17 Notice that Geza von Habsburg, I think there  18 should be one file, okay, but Geza von Habsburg  19 may have a file that talks about the contributions  20 that Mr. Hunter made.  21 I think what -- there's a sort of  22 sophistry going on here about the difference  23 between Dr. Hunter's files, but Dr. Hunter is  24 saying he's a consultant. He's not actually part  25 of Winston, but Winston has a work file, and that</p>	<p style="text-align: right;">Page 113</p> <p>1 time to submit the briefs.  2 ARBITRATOR KRAMER: We can go off the  3 record.  4 (Whereupon, the proceedings concluded at  5 12:30 p.m.)  6 --oo0oo--  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>



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## C E R T I F I C A T E

I, Leonora L. Walker, a Notary Public, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my supervision; that reading and signing was not requested; and that I am neither counsel for or related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 27th day of October 2022.

My commission expires May 17, 2024.



NOTARY PUBLIC IN AND FOR THE

STATE OF NEW YORK

Notary Registration No. 01WA6109670